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ABSTRACT

This document is a compilation of selected laws of the state of Mississippi that pertain to or impact libraries. Excerpts from the Mississippi state constitution, from the Mississippi Code of 1972, and from relevant amendments are all included. Coverage of the statutes extends to issues such as: (1) legal holidays; (2) liability; (3) zoning; (4) health, safety, and welfare; (5) salaries and compensation for public employees; (6) ethics in government; (7) open meeting policies; (8) availability of public records; (9) tax law; (10) public purchases; (11) laws pertaining to schools and education; and (12) laws governing the establishment of libraries. (BEW)

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SELECTED

MISSISSIPPI LIBRARY LAWS

1995

Provided by the
Mississippi Library Commission

ED 393 471

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Mary Ellen Pellington

SELECTED
MISSISSIPPI LIBRARY LAWS

from

The Mississippi Code of 1972

current through

The 1995 Regular Session of
The Mississippi Legislature

1995

Provided by the
Mississippi Library Commission

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FOREWORD

The Mississippi Library Commission is pleased to provide this publication which is an updated compilation of selected laws of the State of Mississippi that pertain to or impact libraries. It can be used as a ready reference guide to assist library directors, library trustees, and public officials.

Mississippi Library Commission
Mary Ellen Pellington, Executive Director

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THE CONSTITUTION OF THE STATE OF MISSISSIPPI

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ARTICLE 4

LEGISLATIVE DEPARTMENT

PROHIBITION

Section 99.

The Legislature shall not elect any other than its own officers and State Librarian.

Editor's Note—
The amendment to Section 99 of Article 4 of the Mississippi Constitution of 1890 set out above was proposed by Laws, 1990, Chapter 693 (Senate Concurrent Resolution No. 528), was ratified by the electorate on November 6, 1990, and was inserted as a part of the Constitution by proclamation of the Secretary of State on December 19, 1990.
The United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 1990, ch. 693, on September 11, 1990.

Cross references—
Election of officers of legislature, see sections 38, 39.
Election of state librarian, see section 106.

MISCELLANEOUS

Section 106.

There shall be a state librarian, to be chosen by the legislature, on joint vote of the two (2) houses, to serve four (4) years, whose duties and compensation shall be prescribed by law.

SOURCES: Laws, 1977, ch. 591, eff December 22, 1978.

Editor's Note—
The amendment to Section 106 of Article 4 of the Constitution of 1890 set out above was proposed by Laws, 1977, ch. 591, being Senate Concurrent Resolution No. 587 of the 1977 regular session of the Legislature, and upon ratification by the electorate on November 7, 1978, was inserted by proclamation of the Secretary of State on December 22, 1978.

Cross references—
Election of state librarian, see section 99.

ARTICLE 8

EDUCATION

Section 210.

No public officer of this state, or any district, county, city, or town thereof, nor any teacher or trustee of any public school, shall be interested in the sale, proceeds, or profits of any books, apparatus, or furniture to be used in any public school in this state. Penalties shall be provided by law for the violation of this section.

Editor's Note—
Senate Concurrent Resolution No. 514, enacted as Chapter 655, Laws, 1984, adopted by the Senate on April 26, 1984, and the House of Representatives on April 25, 1984, proposed to repeal section 210 of the Mississippi Constitution of 1890. The proposed repeal was submitted to the electorate on November 6, 1984, but was rejected.

Cross references—
Prohibitions against public officers having interest in public contracts, see sections 107, 109.

MISSISSIPPI CODE
1972

TITLE 1
LAWS AND STATUTES

Chapter 1. Code of 1972
Chapter 5. Session Laws and Journals

CHAPTER 1
Code of 1972

IN GENERAL

SEC.
1-1-11. Distribution of the Code of 1972.

§ 1-1-11. Distribution of the Code of 1972.

[Until Laws, 1995, ch. 486, § 1, is effectuated under Section 5 of the Voting Rights Act of 1965, this section reads as follows:]

The sets of the compilation of the Mississippi Code of 1972, so purchased by the state when received, shall be distributed by the Office of the Secretary of State as follows:

Fifty-six (56) sets to the Mississippi House of Representatives and forty (40) sets to the Mississippi Senate for the use of the Legislative Reference Bureau, legislative services offices, staffs and committees thereof.

Ten (10) sets to the Governor's Office; nine (9) sets to the Secretary of State; and twenty (20) sets to the Auditor's Office.

One (1) set to each of the following: the Lieutenant Governor; each member of the Legislature; the Treasurer; each district attorney; each county attorney; each judge of the Court of Appeals and each judge of the Supreme, circuit, chancery, county, justice and municipal courts; each Senator and Representative in Congress; State Superintendent of Education; Director of the Department of Finance and Administration; six (6) sets to the Performance Evaluation and Expenditure Review (PEER) Committee, two (2) sets to the Director of the Legislative Budget Office; the Commissioner of Agriculture and Commerce; each Mississippi Transportation Commissioner; six (6) sets to the Department of Corrections; the Insurance Commissioner; the Clerk of the Supreme Court; the State Board of Health; each circuit clerk; each chancery clerk in the state for the use of the chancery clerk and the board of supervisors; each sheriff in the state for the use of his office and the county officers; and each county for the county library (an additional set for each of the last three (3) to be given in counties having two (2) judicial districts).

Two (2) sets to the Department of Archives and History; sixty-eight (68) sets to the Attorney General's Office; six (6) sets to the Public Service Commission; four (4) sets to the Public Utilities Staff; thirty-six (36) sets to the State Tax Commission; two (2) sets to the State Personnel Board; six (6) sets to the State Law

Library; one (1) set to the Library of Congress; ten (10) sets to the University of Mississippi Law School; one (1) set each to the Mississippi School for the Deaf and the Mississippi School for the Blind; one (1) set each to the University of Mississippi, Mississippi State University, Mississippi University for Women, University of Southern Mississippi, Delta State University, Alcorn State University, Jackson State University, Mississippi Valley State University, and the Board of Trustees of State Institutions of Higher Learning; and one (1) set to the Supreme Court judges' conference room. In furtherance of the State Library's reciprocal program of code exchange with libraries of the several states, the Secretary of State shall, at the direction and only upon the written request of the State Librarian, make distribution to such librarian.

One (1) set to each state junior or community college; three (3) sets to the Department of Wildlife, Fisheries and Parks; two (2) sets to the Department of Environmental Quality; and seven (7) sets to the Department of Human Services. One (1) set to each of the following: State Textbook Procurement Commission; University Medical Center; State Library Commission; Department of Agriculture and Commerce; Forestry Commission; and seventeen (17) sets to the Department of Public Safety. Also, one (1) set to each of the following: Adjutant General, Department of Economic and Community Development, Department of Banking and Consumer Finance, Bureau of Buildings, Grounds and Real Property Management, the State Educational Finance Commission, the Mississippi Board of Vocational and Technical Education, Division of Medicaid, State Board of Mental Health, and Department of Youth Services.

The Secretary of State is authorized to distribute additional sets of the Mississippi Code, not to exceed three (3) sets, to the office of each district attorney for the use of his assistants.

The Secretary of State shall provide to the Mississippi House of Representatives and the Mississippi Senate the annual supplements to the Mississippi Code of 1972 for each set of the Code maintained by the House and Senate.

The set of the Mississippi Code of 1972 to be provided each member of the Legislature shall be provided unless specifically waived by such legislator in writing.

An elected or appointed officeholder in the State of Mississippi, except for a member of the Legislature, shall deliver to his successor in office, or to the Secretary of State, if there is no successor, the set of the Mississippi Code of 1972 provided the officeholder under this section.

Before the Secretary of State shall deliver a copy of the Mississippi Code of 1972 to an individual officeholder, the Secretary of State shall prepare and submit a written agreement to the officeholder. The agreement shall, among other provisions, state that the Code is the property of the State of Mississippi, that it shall be transferred to the officeholder's successor in office, that the officeholder has an obligation to make such transfer and that the officeholder shall be responsible for the failure to deliver the Code and for any damage or destruction to the Code, normal wear and tear excepted. The Secretary of State shall execute the agreement and forward it to the officeholder for execution. The Secretary of State shall not deliver the Code to the officeholder until the executed agreement is received by him. The Secretary of State may include in the agreement such other provisions as he may deem reasonable and necessary. In addition to damages or any other remedy for not transferring a set of the Code to his successor, an officeholder who does not transfer his set of the Code shall be guilty of a misdemeanor and shall, upon conviction, pay a fine of One Thousand Dollars ($1,000.00).

Replacement of missing, damaged or destroyed sets or volumes of the Code provided by this chapter may be obtained from the Code publisher through the Secretary of State at the established state cost, the cost to be borne by the recipient.

Provided, however, that no more than one (1) set of the Mississippi Code of 1972 shall be furnished to any one (1) individual, regardless of the office or offices he may hold.

[From and after the date Laws, 1995, ch. 486, § 1, is effectuated under Section 5 of the Voting Rights Act of 1965, this section reads as follows:]

The sets of the compilation of the Mississippi Code of 1972, so purchased by the state when received, shall be distributed by the Office of the Secretary of State as follows:

Fifty-six (56) sets to the Mississippi House of Representatives and forty (40) sets to the Mississippi Senate for the use of the Legislative Reference Bureau, legislative services offices, staffs and committees thereof.

Ten (10) sets to the Governor's Office; nine (9) sets to the Secretary of State; and twenty (20) sets to the Auditor's Office.

One (1) set to each of the following: the Lieutenant Governor; each member of the Legislature; the Treasurer; each district attorney; each county attorney; each judge of the Court of Appeals and each judge of the Supreme, circuit, chancery, county, family, justice and municipal courts; each Mississippi Senator and Mississippi Representative in Congress; State Superintendent of Education; Director of the Department of Finance and Administration; six (6) sets to the Performance Evaluation and Expenditure Review (PEER) Committee, two (2) sets to the Director of the Legislative Budget Office; the Commissioner of Agriculture and Commerce; each Mississippi Transportation Commissioner; six (6) sets to the Department of Corrections; the Insurance Commissioner; the Clerk of the Supreme Court; the State Board of Health; each circuit clerk; each chancery clerk in the state for the use of the chancery clerk and the board of supervisors; each sheriff in the state for the use of his office and the county officers; and each county for the county library (an additional set for each of the last three (3) to be given in counties having two (2) judicial districts).

Two (2) sets to the Department of Archives and History; one (1) set to the State Soil and Water Conservation Commission; sixty-eight (68) sets to the Attorney General's Office; six (6) sets to the Public Service Commission; four (4) sets to the Public Utilities Staff; thirty-six (36) sets to the State Tax Commission; two (2) sets to the State Personnel Board; six (6) sets to the State Law Library; one (1) set to the Library of Congress; ten (10) sets to the University of Mississippi Law School; one (1) set each to the Mississippi School for the Deaf and the Mississippi School for the Blind; one (1) set each to the University of Mississippi, Mississippi State University, Mississippi University for Women, University of Southern Mississippi, Delta State University, Alcorn State University, Jackson State University, Mississippi Valley State University, and the Board of Trustees of State Institutions of Higher Learning; and one (1) set to the Supreme Court judges' conference room. In furtherance of the State Library's reciprocal program of code exchange with libraries of the several states, the Secretary of State shall, at the direction and only upon the written request of the State Librarian, make distribution to such librarian.

One (1) set to each state junior or community college; three (3) sets to the Department of Wildlife, Fisheries and Parks; two (2) sets to the Department of Environmental Quality; and seven (7) sets to the Department of Human Services. One (1) set to each of the following: State Textbook Procurement Commission; University Medical Center; State Library Commission; Department of Agriculture and Commerce; Forestry Commission; and seventeen (17) sets to the Department of Public Safety. Also, one (1) set to each of the following: Adjutant General, Department of Economic and Community Development, Department of Banking and Consumer Finance, Bureau of Building, Grounds and Real Property Management, the State Educational Finance Commission, the Mississippi Board of Vocational and Technical Education, Division of Medicaid, State Board of Mental Health, and Department of Youth Services.

The Secretary of State is authorized to distribute additional sets of the Mississippi Code, not to exceed three (3) sets, to the office of each district attorney for the use of his assistants.

The Secretary of State shall provide to the Mississippi House of Representatives and the Mississippi Senate the annual supplements to the Mississippi Code of 1972 for each set of the Code maintained by the House and Senate.

The set of the Mississippi Code of 1972 to be provided each member of the Legislature shall be provided unless specifically waived by such legislator in writing.

An elected or appointed officeholder in the State of Mississippi, except for a member of the Legislature, shall deliver to his successor in office, or to the Secretary of State, if there is no successor, the set of the Mississippi Code of 1972 provided the officeholder under this section.

Before the Secretary of State shall deliver a copy of the Mississippi Code of 1972 to an individual officeholder, the Secretary of State shall prepare and submit a written agreement to the officeholder. The agreement shall, among other provisions, state that the Code is the property of the State of Mississippi, that it shall be transferred to the officeholder's successor in office, that the officeholder has an obligation to make such transfer and that the officeholder shall be responsible for the failure to deliver the Code and for any damage or destruction to the Code, normal wear and tear excepted. The Secretary of State shall execute the agreement and forward it to the officeholder for execution. The Secretary of State shall not deliver the Code to the officeholder until the executed agreement is received by him. The Secretary of State may include in

the agreement such other provisions as he may deem reasonable and necessary. In addition to damages or any other remedy for not transferring a set of the Code to his successor, an officeholder who does not transfer his set of the Code shall be guilty of a misdemeanor and shall, upon conviction, pay a fine of One Thousand Dollars ($1,000.00).

Replacement of missing, damaged or destroyed sets or volumes of the Code provided by this chapter may be obtained from the Code publisher through the Secretary of State at the established state cost, the cost to be borne by the recipient.

Provided, however, that no more than one (1) set of the Mississippi Code of 1972 shall be furnished to any one (1) individual, regardless of the office or offices he may hold.

SOURCES: Codes, 1942, § 7; Laws, 1942, ch. 318; 1944, ch. 314; 1966, ch. 395, § 1; 1973, ch. 425, § 1; 1974, ch. 377; 1978, ch. 458, § 4; 1981, ch. 536, § 1; 1988, ch. 486, § 1; 1988, ch. 518, § 14; 1990, ch. 402, § 1; 1991, ch. 530, § 6; 1992, ch. 543, § 11; 1993, ch. 430, § 8; 1993, ch. 518, § 8, eff July 13, 1993 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section); 1995, ch. 486, § 1, eff from and after date said ch. 486, is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended.

Editor's Note—

Section 7-7-2, as added by Laws, 1984, chapter 488, § 90, and amended by Laws, 1985, chapter 455, § 14, Laws 1986, chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall mean the state fiscal management board. Thereafter, Laws, 1989, chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer. Subsequently, Laws, 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in ..ny law it shall mean "Executive Director of the Department of Finance and Administration".

Section 37-43-2 provides that the State Board of Education shall assume all power, authority, duties and functions of the State Textbook Procurement Commission.

Section 37-45-1 provides that the State Educational Finance Commission shall be abolished and functions and duties transferred to the State Board of Education. Section 37-45-3 further provides that all references in laws of the state to "State Educational Finance Commission" or "commission", when referring to the Educational Finance Commission, shall be construed to mean the State Board of Education.

Laws, 1993, ch. 518, § 45, provides as follows:

"SECTION 45. Section 32 of this act shall take effect and be in force from and after its passage and the remainder of this act shall take effect and be in force from and after July 2, 1993, or the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, whichever is later."

On July 13, 1993, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended to the amendment of this section by Laws, 1993, ch. 518.

Laws, 1995, ch. 486, §§ 2, 3, provide as follows:

"SECTION 2. The Attorney General of the State of Mississippi is directed to submit this act, immediately upon approval by the Governor, or upon approval by the Legislature subsequent to a veto, to the Attorney General of the United States or to the United States District Court for the District of Columbia in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended.

"SECTION 3. This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

Amendment Note—

The **1995** amendment revised this section so as provide that one set of the Mississippi Code be distributed by the Secretary of state to the State Soil and Water Conservation Commission and that one set of the Code be distributed to family court judges.

Cross references—

Purchase and distribution of pocket part supplements and replacement bound volumes by secretary of state, see § 1-1-57.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

SUPPLEMENTATION OF CODE OF 1972 AND UPDATE OF COMPUTER TAPES

SEC.

1-1-57. Purchase and distribution of pocket part supplements and replacement bound volumes by secretary of state.

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§ 1-1-57. Purchase and distribution of pocket part supplements and replacement bound volumes by secretary of state.

The secretary of state, upon approval thereof by the attorney general, is hereby authorized to purchase such numbers of sets of the pocket part supplements and the replacement volumes, including index replacement volumes, as may be required to maintain in a current status the sets of the code of 1972 authorized to be furnished under the provisions of section 1-1-11, Mississippi Code of 1972, and to distribute the same to

the proper parties. In furtherance of the state library's reciprocal program of code exchange with libraries of the several states the secretary of state shall, at the direction and only upon the written request of the state librarian, make distribution to such libraries.

SOURCES: Laws, 1973, ch. 366, § 4; 1979, ch. 323, § 2, eff from and after passage (approved March 1, 1979).

CHAPTER 5

Session Laws and Journals

SEC.
1-5-5. General laws and journals, local and private laws deposited in state law library.
1-5-7. Distribution of general laws and journals, and local and private laws free of charge.
1-5-25. To receive certain books from the sheriffs and distribute them.

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§ 1-5-5. General laws and journals, local and private laws deposited in state law library.

The Office of the Secretary of State shall provide five (5) volumes of the general laws and journals and five (5) volumes of the local and private laws of each session of the Legislature to the State Law Library.

SOURCES: Codes, 1857, ch. 6, art. 17; 1871, § 122; 1880, § 208; 1892, § 4089; 1906, § 4641; Hemingway's 1917, § 7479; 1930, § 6939; 1942, § 4199; Laws, 1989, ch. 321, § 2; 1992, ch. 543, § 3; 1993, ch. 430, § 3, eff from and after July 1, 1993.

Cross references—
State librarian custodian of state property, see § 39-1-9.

§ 1-5-7. Distribution of general laws and journals, and local and private laws free of charge.

The Office of the Secretary of State shall distribute and transmit, free of cost, the general laws and journals of each session of the Legislature, as follows: One (1) volume of each to the following: Governor, Lieutenant Governor, Secretary of State, Attorney General, State Auditor, State Treasurer, Clerk of the Supreme Court, the Court of Appeals; Mississippi State University, Mississippi University for Women, Alcorn State University, University of Southern Mississippi, Delta State University, Jackson State University, Mississippi Valley State University, University of Mississippi and University of Mississippi School of Law; the sheriff of each county for the county law library; each member of the Legislature; the Secretary of the Senate; the Clerk of the House; each attorney employed in the Legislative Services Offices of the House of Representatives and the Senate; each legislative committee meeting room in the New Capitol; the Legislative Reference Bureau; the Department of Archives and History; and the Library of Congress at Washington, D.C. The copies to be provided each member of the Legislature shall be provided unless specifically waived by such legislator in writing. The Office of the Secretary of State shall provide, free of cost, one (1) volume of the local and private laws to each attorney employed in the Legislative Services Offices of the House of Representatives and the Senate; each legislative committee meeting room in the New Capitol; and the Legislative Reference Bureau.

In addition to the volumes provided to the Legislative Services Offices attorneys under this section, four (4) volumes of the general laws, three (3) volumes of the local and private laws and two (2) volumes of the journal of the particular house involved shall be provided free of cost to the Legislative Services Offices of the House of Representatives and the Senate. Receipt of any number of volumes that are to be provided to the Legislative Services Offices and their attorneys under this section may be waived in writing by the Director of the Legislative Services Office of either house.

SOURCES: Codes, Hutchinson's 1848, ch. 19, art. 5 (6); 1857, ch. 6, art. 18; 1871, § 123; 1880, § 209; 1892, § 4090; 1906, § 4642; Hemingway's 1917, § 7480; 1930, § 6940; 1942, § 4200; Laws, 1938, ch. 215; 1940, ch. 317; 1978, ch. 458, § 5; 1988, ch. 486, § 2; 1992, ch. 543, § 4; 1993, ch. 430, § 4; 1993, ch. 518, § 9, eff July 13, 1993 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

Editor's Note—
Laws, 1993, ch. 518, § 45, provides as follows:
"SECTION 45. Section 32 of this act shall take effect and be in force from and after its passage and the remainder of this act shall take effect and be in force from and after July 2, 1993, or the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, whichever is later."
On July 13, 1993, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended to the amendment of this section by Laws, 1993, ch. 518.

Cross references—
Distribution of acts of legislature, see §§ 1-5-13 et seq.
Secretary of state receiving all extra copies of acts of legislature from sheriffs, see § 1-5-25.
Governor transmitting copies of the laws and documents, see § 7-1-15.

BEST COPY AVAILABLE

§ 1-5-25. To receive certain books from the sheriffs and distribute them.

The secretary of state shall receive from the several sheriffs all extra copies of the acts of the legislature, which the sheriffs are required to return to him, and he shall see that the several sheriffs perform the duty required of them in this behalf. If there be less than ten copies of any of the acts, in the state library, he shall supply the deficiency from the acts so returned to him, and out of the residue of the acts so returned, he shall, as far as can be, supply each county with the books needed to complete the set belonging to each respectively, and shall take the receipt of the sheriff therefor; and any books not thus disposed of shall be preserved in his office, and sold as other like books.

SOURCES: Codes, 1892, § 4100; 1906 § 4652; Hemingway's 1917, § 7490; 1930, § 6950; 1942, § 4210.

Cross references—
Another section derived from same 1942 code section, see § 7-3-25.

TITLE 3

STATE SOVEREIGNTY, JURISDICTION AND HOLIDAYS

Chapter 3. State Boundaries, Holidays, and State Emblems

CHAPTER 3

State Boundaries, Holidays, and State Emblems

SEC.
3-3-7. Legal holidays.

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§ 3-3-7. Legal holidays.

(1) Except as otherwise provided in subsection (2) of this section, the following are declared to be legal holidays, viz: the first day of January (New Year's Day); the third Monday of January (Robert E. Lee's birthday and Dr. Martin Luther King, Jr.'s birthday); the third Monday of February (Washington's birthday); the last Monday of April (Confederate Memorial Day); the last Monday of May (National Memorial Day and Jefferson Davis' birthday); the fourth day of July (Independence Day); the first Monday of September (Labor Day); the eleventh day of November (Armistice or Veterans' Day); the day fixed by proclamation by the Governor of Mississippi as a day of Thanksgiving, which shall be fixed to correspond to the date proclaimed by the President of the United States (Thanksgiving Day); and the twenty-fifth day of December (Christmas Day). In the event any holiday hereinbefore declared legal shall fall on Sunday, then the next following day shall be a legal holiday.

(2) In lieu of any one (1) legal holiday provided for in subsection (1) of this section, the governing authorities of any municipality or county may declare, by order spread upon its minutes, Mardi Gras Day to be a legal holiday.

(3) August 16 is declared to be Elvis Aron Presley Day in recognition and appreciation of Elvis Aron Presley's many contributions, international recognition and the rich legacy left to us by Elvis Aron Presley. This day shall be a day of recognition and observation and shall not be recognized as a legal holiday.

(4) May 8 is declared to be Hernando de Soto Day in recognition, observation and commemoration of Hernando de Soto, who led the first and most imposing expedition ever made by Europeans into the wilds of North America and the State of Mississippi, and in further recognition of the Spanish explorer's 187-day journey from the Tombigbee River basin on our state's eastern boundary, westward to the place of discovery of the Mississippi River on May 8, 1541. This day shall be a day of commemoration, recognition and observation of Hernando de Soto and European exploration and shall not be recognized as a legal holiday.

(5) Insofar as possible, Armistice Day shall be observed by appropriate exercises in all the public schools in the State of Mississippi at the eleventh hour in the morning of the eleventh day of the eleventh month of the year.

SOURCES: Codes, 1880, § 1132; 1892, § 3514; 1906, § 4011; Hemingway's 1917, § 2045; 1930, § 5024; 1942, § 5946; Laws, 1924, ch. 343; 1940, ch. 138; 1948, ch. 365; 1966, ch. 563, § 1; 1970, ch. 460, § 1; 1987, ch. 301; 1987, ch. 398; 1988, ch. 566; 1993, ch. 301, § 1, eff from and after passage (approved February 11, 1993).

Cross references—
Designation of the first week in May as Hernando de Soto Week, see § 3-3-8.
Legal holidays being excepted from days state offices are to be open and staffed, see § 25-1-98.
Office hours of court house officers, see § 25-1-99.
Regulation of banking hours, see § 81-5-97.

Research and Practice References—

73 Am Jur 2d, Sundays and Holidays §§ 1 et seq.

40 CJS, Holidays §§ 1 et seq.

83 CJS, Sundays §§ 1 et seq.

Symposium on Mississippi Rules of Civil Procedure: Time, Evidence, Subpoenas, and Masters, Referees, and Commissioners—Rules 6, 43, 45 and 53. 52 Miss L J 145, March 1982.

Annotations—

Validity of court's judgment rendered on Sunday or holiday. 85 ALR2d 595.

Establishment and free exercise of religion clauses of Federal Constitution's First Amendment as applied to governmental regulations or activities allegedly supporting public observance of Sabbath or of religious holiday. 106 L Ed 2d 752.

TITLE 7
EXECUTIVE DEPARTMENT

Chapter 1. Governor
Chapter 3. Secretary of State
Chapter 5. Attorney General

CHAPTER 1
Governor

GENERAL PROVISIONS

SEC.
7-1-15. Transmission of laws and documents.

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§ 7-1-15. Transmission of laws and documents.

The governor shall cause to be transmitted to the executive of each state of the United States, to the library of congress, and to the proper authority of the governments of Canada and Mexico, copies of the laws, journals, reports, and documents printed by order of the legislature. He shall receive such books and publications as may be transmitted in return, and cause the same to be deposited in the state library.

SOURCES: Codes, Hutchinson's 1848, ch. 18, art. 8 (1); 1857, ch. 6, art. 8; 1871, § 104; 1880, § 196; 1892, § 2160; 1906, § 2376; Hemingway's 1917, § 4768; 1930, § 4821; 1942, § 3979.

Cross references—
Secretary of state distributing acts and journals of legislature, see § 1-5-7.

CHAPTER 3

Secretary of State

GENERAL PROVISIONS

SEC.
7-3-13. "Southern Reporter—Mississippi Cases" and department reports deposited in state library.
7-3-15. "Southern Reporter—Mississippi Cases" distributed.
7-3-23. Acts of congress and other publications distributed.
7-3-25. Books received from sheriffs distributed.

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§ 7-3-13. "Southern Reporter—Mississippi Cases" and department reports deposited in state library.

The Secretary of State shall cause ten (10) copies of each volume of the "Southern Reporter-Mississippi Cases", and ten (10) copies of the department reports, when printed and bound, to be provided to the State Library.

SOURCES: Codes, 1857, ch. 6, art. 17; 1871, § 122; 1880, § 208; 1892, § 4089; 1906, § 4641; Hemingway's 1917, § 7479; 1930, § 6939; 1942, § 4199; Laws, 1989, ch. 321, § 4, eff from and after July 1, 1989; 1992, ch. 543, § 12, eff from and after July 1, 1992.

§ 7-3-15. "Southern Reporter—Mississippi Cases" distributed.

The Secretary of State shall transmit, free of cost, one (1) copy of each volume of "Southern Reporter-Mississippi Cases" to the sheriff of each county of the state, for the county library; one (1) copy of each volume thereof to each of the following educational institutions, to wit: Mississippi State University, Alcorn State University, Mississippi University for Women, Mississippi College School of Law, Delta State University, Jackson State University, Mississippi Valley State University, and the University of Southern Mississippi; ten (10) copies of each volume thereof to the University of Mississippi; and one (1) copy of each volume to the library of congress at Washington, D.C.

The above provisions of this section shall be made in recognition of benefits received through receipt at depository libraries and elsewhere in the state of Mississippi of public documents of the United States under the provisions of federal law.

SOURCES: Codes, 1880, § 265; 1892, § 4093; 1906, § 4645; Hemingway's 1917, § 7483; 1930, § 6943; 1942, § 4203; Laws, 1936, 1st Ex. ch. 14; 1940, ch. 317; 1992, ch. 543, § 13, eff from and after July 1, 1992.

Editor's Note—
Section 37-117-1 changed the name of Mississippi State College for Women to Mississippi University for Women.
Section 37-121-1 changed the name of Alcorn Agricultural and Mechanical College to Alcorn State University.
Section 37-123-1 changed the name of Delta State College to Delta State University.

Cross references—
Distribution of books received from sheriffs, see § 7-3-25.

§ 7-3-23. Acts of congress and other publications distributed.

The secretary of state shall, at the time of distributing the laws and journals, also transmit to the sheriff of each county, for the county library, one copy of the acts of congress, if there be so many remaining, and such other books, papers, maps, and documents as may be required by the legislature or governor to be distributed to the several counties.

SOURCES: Codes, 1857, ch. 6, art. 19; 1871, § 124; 1880, § 210; 1892, § 4096; 1906, § 4648; Hemingway's 1917, § 7486; 1930, § 6946; 1942, § 4206.

§ 7-3-25. Books received from sheriffs distributed.

The secretary of state shall receive from the several sheriffs, who are required to return the same, all extra

copies of the "Mississippi Reports" and digests, and he shall see that said sheriffs perform the duty required of them in this respect. If there be less than the required number of copies of any report or digest in the state library, he shall supply the deficiency from the reports so returned to him. Out of the residue of the reports so returned, he shall, as far as possible, supply each county with the books needed to complete the set belonging thereto and shall take the receipt of the sheriff therefor. Any books not thus disposed of shall be preserved in his office and sold as other like books.

SOURCES: Codes, 1892, § 4100; 1906, § 4652; Hemingway's 1917, § 7490; 1930, § 6950; 1942, § 4210.

CHAPTER 5

Attorney General

SEC.
7-5-25. To give opinions in writing.

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§ 7-5-25. To give opinions in writing.

The attorney general shall give his opinion in writing, without fee, to the legislature, or either house or any committee thereof, and to the governor, the secretary of state, the auditor of public accounts, the state treasurer, the superintendent of public education, the insurance commissioner, the commissioner of agriculture and commerce, the state geologist, the state factory inspector, the state librarian, the director of archives and history, the adjutant general, the state board of health, the commissioner of corrections, the members of the Mississippi Board of Corrections, the public service commission, chairman of the state tax commission, the state forestry commission, the highway commission, and any other state officer, department or commission operating under the law, or which may be hereafter created; the trustees and heads of any state institution, the trustees and heads of the universities and the state colleges, the district attorneys, the boards of supervisors of the several counties, the sheriffs, the chancery clerks, the circuit clerks, the superintendents of education, the tax assessors, county surveyors, the county attorneys, the attorneys for the boards of supervisors, mayor or council or board of aldermen of any municipality of this state, and all other county officers (and no others), when requested in writing, upon any question of law relating to their respective offices.

When any officer, board, commission, department or person authorized by this section to require such written opinion of the attorney general shall have done so and shall have stated all the facts to govern such opinion, and the attorney general has prepared and delivered a legal opinion with reference thereto, there shall be no liability, civil or criminal, accruing to or against any such officer, board, commission, department or person who, in good faith, follows the direction of such opinion and acts in accordance therewith unless a court of competent jurisdiction, after a full hearing, shall judicially declare that such opinion is manifestly wrong and without any substantial support. No opinion shall be given or considered if said opinion is given after suit is filed or prosecution begun.

SOURCES: Codes, 1892, § 183; 1906, § 189; Hemingway's, 1917, § 3477; 1930, § 3663; 1942, § 3834; Laws, 1930, ch. 154; 1940, ch. 249; 1978, ch. 458, § 7, eff from and after January 1, 1980.

Editor's Note—

Section 7-7-2, as added by Laws, 1984, chapter 488, § 90, and amended by Laws, 1985, chapter 455, § 14, Laws 1986, chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws, 1989, chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws, 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross references—

Attorney general's opinion on proposed amendments to municipal charters, see § 21-17-9.
Opinions of the attorney general on ethical questions concerning individual legislators, see § 25-4-18.
Powers and duties of attorney general as attorney for state tax commission, see § 29-1-137.
Attorney general advising superintendent of public education, see § 37-3-11.

Research and Practice References—

7 Am Jur 2d, Attorney General § 11.
7A CJS, Attorney General § 9.

JUDICIAL DECISIONS

The statutory requirement that no member of the board of chiropractic examiners can be a stockholder in or member of the faculty or board of trustees of any school of chiropractic was not violated by a member who was listed in the bulletin of a chiroprac-

tic college as a member of its board of trustees and a visiting lecturer where, inter alia, he declined the invitation to serve, he never attended any meetings of the board and did not participate as a member of the faculty or deliver any lectures to classes; the introduction in evidence of an opinion by the attorney general which was rendered after the filing of this action, although contrary to statute, was harmless error. State ex rel. Smith v Morgan (1978, Miss) 361 So 2d 338.

An attorney general's opinion, itself infected with unconstitutional state action in attempting to support the action of a school board in establishing a racially segregated private school, cannot be relied on to justify an unconstitutional action, despite statutory language exonerating persons acting in good faith in accordance therewith. United States v Tunica County School Dist. (1970, ND Miss) 323 F Supp 1019, affd (CA5 Miss) 440 F2d 377.

Where district attorney was serving three counties, he was not precluded from maintaining mandamus proceedings on behalf of one of such counties to compel motor vehicle comptroller to pay over certain funds to county out of gasoline tax collections in excess of the share which comptroller was willing to concede. McCullen v State (1953) 217 Miss 256, 63 So 2d 856.

Right to bring a mandamus action on behalf of Hancock county, to compel the state highway commission to appraise and reimburse such county for its proportionate value of a bridge, connecting Hancock and Harrison counties, which had been taken over by the commission, was not in the attorney general exclusively, but the district attorney of the judicial district in which Hancock county is located also had such right, and could maintain the action in Hinds county. State ex rel. Cowan v State Highway Com. (1943) 195 Miss 657, 13 So 2d 614.

The courts will not undertake to control the attorney general in the matter of his official opinion. Woodbury v McClurg (1901) 78 Miss 831, 29 So 514.

TITLE 11

CIVIL PRACTICE AND PROCEDURE

Chapter 46. Immunity of State and Political Subdivisions from Liability and Suit for Torts and Torts of Employees

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CHAPTER 46

Immunity of State and Political Subdivisions from Liability and Suit for Torts and Torts of Employees

SEC.

11-46-1. Definitions.
11-46-3. Declaration of legislative intent.
11-46-5. Waiver of immunity; course and scope of employment; presumptions.
11-46-7. Exclusiveness of remedy; joinder of government employee; immunity for acts or omissions occurring within course and scope of employee's duties; provision of defense for and payment of judgments or settlements of claims against employees; contribution or indemnification by employee.
11-46-9. Exemption of governmental entity from liability on claims based on specified circumstances.
11-46-11. Statute of limitations; notice of claim requirements.
11-46-13. Jurisdiction; appeals; venue.
11-46-15. Limitation of liability; exemplary or punitive damages; interest; attorney's fees; reduction of award.
11-46-16. Authority to purchase liability insurance; waiver of immunity to extent of insurance coverage.
11-46-17. Creation of Tort Claims Fund; liability insurance.
11-46-18. Mississippi Tort Claims Board; membership; payment of expenses; officers; meetings.
11-46-19. Powers and duties of board.
11-46-20. Tort Claims Board; regulation of liability coverage of governmental entities; annual review of insurance plans; other powers; fees.
11-46-21. Transfer of funds from Accident Contingent Fund and Tort Claims Fund to Accident Contingent Tort Fund.
11-46-23. Provisions of chapter independent and severable.

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§ 11-46-1. Definitions.

As used in this chapter the following terms shall have the meanings herein ascribed unless the context otherwise requires:

(a) "Claim" means any demand to recover damages from a governmental entity as compensation for injuries.

(b) "Claimant" means any person seeking compensation under the provisions of this chapter, whether by administrative remedy or through the courts.

(c) "Board" means the Mississippi Tort Claims Board.

(d) "Department" means the Department of Finance and Administration.

(e) "Director" means the executive director of the department who is also the executive director of the board.

(f) "Employee" means any officer, employee or servant of the State of Mississippi or a political subdivision of the state, including elected or appointed officials and persons acting on behalf of the state or a political subdivision in any official capacity, temporarily or permanently, in the service of the state or a political subdivision whether with or without compensation. The term "employee" shall not mean a person or other legal entity while acting in the capacity of an independent contractor under contract to the state or a political subdivision; provided, however, that for purposes of the limits of liability provided for in Section 11-46-15, the term "employee" shall include physicians under contract to provide health services with

the State Board of Health, the State Board of Mental Health or any county or municipal jail facility while rendering services under such contract.

(g) "Governmental entity" means and includes the state and political subdivisions as herein defined.

(h) "Injury" means death, injury to a person, damage to or loss of property or any other injury that a person may suffer that is actionable at law or in equity.

(i) "Political subdivision" means any body politic or body corporate other than the state responsible for governmental activities only in geographic areas smaller than that of the state, including but not limited to any county, municipality, school district, community hospital as defined in Section 41-13-10, Mississippi Code of 1972, airport authority or other instrumentality thereof, whether or not such body or instrumentality thereof has the authority to levy taxes or to sue or be sued in its own name.

(j) "State" means the State of Mississippi and any office, department, agency, division, bureau, commission, board, institution, hospital, college, university, airport authority or other instrumentality thereof, whether or not such body or instrumentality thereof has the authority to levy taxes or to sue or be sued in its own name.

(k) "Law" means all species of law including but not limited to any and all constitutions, statutes, case law, common law, customary law, court order, court rule, court decision, court opinion, court judgment or mandate, administrative rule or regulation, executive order, or principle or rule of equity.

SOURCES: Laws, 1984, ch. 495, § 1; reenacted without change, 1985, ch. 474, § 1; 1988, ch. 479, § 2; 1993, ch. 476, § 1, eff from and after passage (approved April 1, 1993).

Editor's Note—

Laws, 1987, ch. 483, § 50, provides as follows:

"SECTION 50. Section 4, Chapter 495, Laws of 1984, as reenacted and amended by Section 12, Chapter 474, Laws of 1985, as amended by Section 6, Chapter 438, Laws of 1986, which specifies the causes of action that are covered by Chapter 46, Title 11, Mississippi Code of 1972, and specifies the law that governs causes of action that occur prior to the effective date of coverage of Chapter 46, Title 11, Mississippi Code of 1972, is hereby repealed."

Cross references—

Immunity from suit of political subdivisions as they are defined in this section, see § 11-46-3.

Applicability of sections 11-46-1 et seq. to community hospitals, their owners, and their boards of trustees, see § 41-13-11.

Applicability of §§ 11-46-1 et seq. to causes of action arising out of any wrongful act or omission in connection with an activity or operation of a hospital, nursing home or other community hospital facility or community health program, see § 41-13-11.

Application of this chapter to actions by and against electric utilities arising out of injuries resulting from contact with high voltage overhead lines, see § 45-15-13.

"State" or a "political subdivision", as defined in this section, as being an employer subject to the Workers' Compensation Law, see § 71-3-5.

Research and Practice References—

41 Am Jur Trials 1, Social Worker Malpractice for Failure to Protect Foster Children.

The History and Future of Sovereign Immunity for Mississippi School Districts. 58 Miss L J 275, Fall 1988.

1984 Mississippi Supreme Court Review: Civil Procedure. 55 Miss LJ 49, March, 1985.

Annotations—

Liability of county for torts in connection with activities which pertain, or are claimed to pertain, to private or proprietary function. 16 ALR2d 1079.

Persons upon whom notice of injury or claim against municipal corporation may or must be served. 23 ALR2d 969.

Immunity from liability for damages in tort of state or governmental unit or agency in operating hospital. 25 ALR2d 203.

Tort liability of governmental unit for injury or damage resulting from insecticide and vermin eradication operations. 25 ALR2d 1057.

Operation of garage for maintenance and repair of municipal vehicles as governmental function. 26 ALR2d 944.

Installation or operation of parking meters as within governmental immunity from tort liability. 33 ALR2d 761.

Infancy or incapacity as affecting notice required as condition of holding municipality or other political subdivision liable for personal injury. 34 ALR2d 725.

Tort liability of municipality or other governmental unit in connection with destruction of weeds and the like. 34 ALR2d 1210.

Maintenance of auditorium, community recreational center, building, or the like, by municipal corporation as governmental or proprietary function for purposes of tort liability. 47 ALR2d 544.

Municipal operation of bathing beach or swimming pool as governmental or proprietary function, for purposes of tort liability. 55 ALR2d 1434.

Rule of municipal immunity from liability for acts in performance of governmental functions as applicable to personal injury or death as result of a nuisance. 56 ALR2d 1415.

Municipal operation of sewage disposal plant as governmental or proprietary function, for purposes of tort liability. 57 ALR2d 1336.

Comment Note.—Municipal immunity from liability for torts. 60 ALR2d 1198.

Waiver of, or estoppel to assert, failure to give required notice of claim of injury to municipality, county, or other governmental agency or body. 65 ALR2d 1278.

Liability or indemnity insurance carried by governmental unit as affecting immunity from tort liability. 68 ALR2d 1437.

What is "motor vehicle" or the like within statute waiving governmental immunity as to operation of such vehicles. 77 ALR2d 945.

Liability for performing an autopsy. 83 ALR2d 955.

Snow removal operations as within doctrine of governmental immunity from tort liability. 92 ALR2d 796.

Right of contractor with federal, state, or local public body to latter's immunity from tort liability. 9 ALR3d 382.

Modern status of the rules as to immunity of foreign sovereign from suit in federal or state courts. 25 ALR3d 322.

Modern status of doctrine of sovereign immunity as applied to public schools and institutions of higher learning. 33 ALR3d 703.

Liability of highway authorities arising out of motor vehicle accident allegedly caused by failure to erect or properly maintain traffic control device at intersection. 34 ALR3d 1008.

Tort liability of public schools and institutions of higher learning for injuries caused by acts of fellow students. 36 ALR3d 330.

Tort liability of public schools and institutions of higher learning for accidents occurring during use of premises and equipment for other than school purposes. 37 ALR3d 712.

Tort liability of public schools and institutions of higher learning for injuries due to condition of grounds, walks, and playgrounds. 37 ALR3d 738.

Tort liability of public schools and institutions of higher learning for injuries resulting from lack or insufficiency of supervision. 38 ALR3d 830.

Liability of municipal corporation for negligent performance of building inspector's duties. 41 ALR3d 567.

Liability of governmental entity or public officer for personal injury or damages arising out of vehicular accident due to negligent or defective design of highway. 45 ALR3d 875.

Attorney's mistake or neglect as excuse for failing to file timely notice of tort claim against state or local governmental unit. 55 ALR3d 930.

Modern status of the law as to validity of statutes or ordinances requiring notice of tort claim against local governmental entity. 59 ALR3d 93.

Liability of governmental entity for issuance of permit for construction which caused or accelerated flooding. 62 ALR3d 514.

Validity and construction of statute authorizing or requiring governmental unit to procure liability insurance covering public officers or employees for liability arising out of performance of public duties. 71 ALR3d 6.

Validity and construction of statute authorizing or requiring governmental unit to indemnify public officer or employee for liability arising out of performance of public duties. 71 ALR3d 90.

Maintenance of class action against governmental entity as affected by requirement of notice of claim. 76 ALR3d 1244.

Sovereign immunity doctrine as precluding suit against sister state for tort committed within forum state. 81 ALR3d 1239.

Governmental tort liability for social service agency's negligence in placement, or supervision after placement, of children. 90 ALR3d 1214.

Governmental liability from operation of zoo. 92 ALR3d 832.

Liability of governmental unit or private owner or occupant of land abutting highway for injuries or damage sustained when motorist strikes tree or stump on abutting land. 100 ALR3d 510.

Liability of university, college, or other school for failure to protect student from crime. 1 ALR4th 1099.

Tort liability of public schools and institutions of higher learning for educational malpractice. 1 ALR4th 1139.

Liability, in motor vehicle-related cases, of governmental entity for injury or death resulting from design, construction, or failure to warn of narrow bridge. 2 ALR4th 635.

Actual notice or knowledge by governmental body or officer of injury or incident resulting in injury as constituting required claim or notice of claim for injury—modern status. 7 ALR4th 1063.

Liability of urban redevelopment authority or other state or municipal agency or entity for injuries occurring in vacant or abandoned property owned by governmental entity. 7 ALR4th 1129.

Construction and application, under state law, of doctrine of "executive privilege". 10 ALR4th 355.

Liability of state, in issuing automobile certificate of title, for failure to discover title defect. 28 ALR4th 184.

Governmental tort liability as to highway median barriers. 58 ALR4th 559.

Governmental tort liability for injury to roller skater allegedly caused by sidewalk or street defects. 58 ALR4th 1197.

Governmental liability for failure to post highway deer crossing warning signs. 59 ALR4th 1217.

State's liability for personal injuries from criminal attack in state park. 59 ALR4th 1236.

Tort liability of public authority for failure to remove parentally abused or neglected children from parents' custody. 60 ALR4th 942.

Federal Tort Claims Act: When is government officer or employee "acting within the scope of his office or employment" for purpose of determining government liability under 28 USC sec. 1346(b). 6 ALR Fed 373.

Effect of Foreign Sovereign Immunities Act (28 USCS secs. 1330, 1441(d), 1602 et seq.) on right to jury trial in action against foreign state. 56 ALR Fed 679.

JUDICIAL DECISIONS

The decision of the Supreme Court declaring unconstitutional the portion of the Sovereign Immunity Act (§§ 11-41-6 et seq.) mandating that all claims against the State be governed by case law governing sovereign immunity as it existed on November 10, 1982, applies prospectively only, and is "purely prospective" so that it applies only to claims arising after the mandate issues. Presley v Mississippi State Highway Com. (1992, Miss) 608 So 2d 1288.

To the extent that § 11-46-6 purports to freeze the doctrine of sovereign immunity to the state of development of the common law prior to Pruett v City of Rosedale (1982, Miss) 421 so2d 1046, it is void; the State is immunized from claims arising thereafter to the extent that the Supreme Court would do so applying the evolving standards of common law, including any extensions or contractions of the doctrine deemed appropriate, on a case by case basis and to the extent that those benefitting by the immunity did not prepare themselves by acquiring insurance policies covering the liability in question in the event that immunity did not obtain. Presley v Mississippi State Highway Com. (1992, Miss) 608 So 2d 1288.

The portion of the Sovereign Immunity Act (§§ 11-46-1 et seq.) requiring that all claims against the State be governed by case law governing sovereign immunity as it existed immediately prior to the decision in Pruett v City of Rosedale (1982, Miss) 421 So 2d 1046 is unconstitutional as it violates the doctrine of separation of powers and the prohibition against reviving or amending a law by reference to its title only. Presley v Mississippi State Highway Com. (1992, Miss) 608 So 2d 1288.

State Highway Commission is alter ego of state and shares in state's Eleventh Amendment immunity from suit in federal court. Brady v Michelin Reifenwerke (1985, SD Miss) 613 F Supp 1076.

§ 11-46-3. Declaration of legislative intent.

(1) The Legislature of the State of Mississippi finds and determines as a matter of public policy and does hereby declare, provide, enact and reenact that the "state" and its "political subdivisions," as such terms are defined in Section 11-46-1, are not now, have never been and shall not be liable, and are, always have been and shall continue to be immune from suit at law or in equity on account of any wrongful or tortious act or omission or breach of implied term or condition of any warranty or contract, including but not limited to libel, slander or defamation, by the state or its political subdivisions, or any such act, omission or breach by any employee of the state or its political subdivisions, notwithstanding that any such act, omission or breach constitutes or may be considered as the exercise or failure to exercise any duty, obligation or function of a governmental, proprietary, discretionary or ministerial nature and notwithstanding that such act, omission or breach may or may not arise out of any activity, transaction or service for which any fee, charge, cost or other consideration was received or expected to be received in exchange therefor.

(2) The immunity of the state and its political subdivisions recognized and reenacted herein is and always has been the law in this state, before and after November 10, 1982, and before and after July 1, 1984, and is and has been in full force and effect in this state except only in the case of rights which, prior to the date of final passage hereof, have become vested by final judgment of a court of competent jurisdiction or by the express terms of any written contract or other instrument in writing.

SOURCES: Laws, 1984, ch. 495, § 2; reenacted and amended, 1985, ch. 474, § 2; reenacted and amended, 1986, ch. 438, § 1; 1987, ch. 483, § 1; 1988, ch. 442, § 1; 1989, ch. 537, § 1; 1990, ch. 518, § 1; 1991, ch. 618, § 1; 1992, ch. 491 § 3; 1992 Special Session, ch. 3, § 1; 1993, ch. 476, § 2, eff from and after passage (approved April 1, 1993).

Editor's Note—

Laws, 1987, ch. 483,§ 50, provides as follows:

"SECTION 50. Section 4, Chapter 495, Laws of 1984, as reenacted and amended by Section 12, Chapter 474, Laws of 1985, as amended by Section 6, Chapter 438, Laws of 1986, which specifies the causes of action that are covered by Chapter 46, Title 11, Mississippi Code of 1972, and specifies the law that governs causes of action that occur prior to the effective date of coverage of Chapter 46, Title 11, Mississippi Code of 1972, is hereby repealed."

Cross references—

Waiver of immunity granted in this section, see § 11-46-5.

Research and Practice References—

51 Am Jur 2d, Limitation of Actions, §§ 399, 416.
57 Am Jur 2d, Municipal, School, and State Tort Liability, §§ 53 et seq.
64 Am Jur 2d, Public Works and Contracts, §§ 132 et seq.
65 Am Jur 2d, Public Officers and Employees, §§ 261 et seq.
72 Am Jur 2d, States, Territories, and Dependencies, §§ 87-89.
81 CJS, States §§ 201 et seq.
19 Am Jur POF2d p 583, Governmental Entity's Liability for Injuries caused by Negligently Released Individual.
The History and Future of Sovereign Immunity for Mississippi School Districts. 58 Miss L J 275, Fall 1988.

Annotations—

Governmental liability for failure to post highway deer crossing warning signs. 59 ALR4th 1217.
State's liability for personal injuries from criminal attack in state park. 59 ALR4th 1236.
Tort liability of public authority for failure to remove parentally abused or neglected children from parents' custody. 60 ALR4th 942.

JUDICIAL DECISIONS

A county was protected by sovereign immunity in a wrongful death action arising from an automobile collision which occurred on a county road bridge on September 20, 1985, following the enactment of §§ 11-46-1 et seq. Coplin v Francis (1994, Miss) 631 So 2d 752.

The decision of the Supreme Court declaring unconstitutional the portion of the Sovereign Immunity Act (§§ 11-41-6 et seq.) mandating that all claims against the State be governed by case law governing sovereign immunity as it existed on November 10, 1982, applies prospectively only, and is "purely prospective" so that it applies only to claims arising after the mandate issues. Presley v Mississippi State Highway Com. (1992, Miss) 608 So 2d 1288.

To the extent that § 11-46-6 purports to freeze the doctrine of sovereign immunity to the state of development of the common law prior to Pruett v City of Rosedale (1982, Miss) 421 so2d 1046, it is void; the State is immunized from claims arising thereafter to the extent that the Supreme Court would do so applying the evolving standards of common law, including any extensions or contractions of the doctrine deemed appropriate, on a case by case basis and to the extent that those benefitting by the immunity did not prepare themselves by acquiring insurance policies covering the liability in question in the event that immunity did not obtain. Presley v Mississippi State Highway Com. (1992, Miss) 608 So 2d 1288.

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In a personal injury action against a city and city officials, the 6-year statute of limitations set forth in § 15-1-49, rather than the 2-year statute of limitations set forth in § 11-46-11(3) of the Tort

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Claims Act, applied since the Tort Claims Act had not yet taken effect. Starnes v Vardaman (1991, Miss) 580 So 2d 733.

The continuance of electrical power is a property interest worthy of due process protections. Thus, the defense of sovereign immunity was not available to a county where a homeowner alleged that he had been damaged when the county and an electrical utility discontinued his electrical power, since sovereign immunity is no defense where a violation of constitutional rights is concerned. Tucker v Hinds County (1990, Miss) 558 So 2d 869.

§ 11-46-5. Waiver of immunity; course and scope of employment; presumptions.

(1) Notwithstanding the immunity granted in Section 11-46-3, or the provisions of any other law to the contrary, the immunity of the state and its political subdivisions from claims for money damages arising out of the torts of such governmental entities and the torts of their employees while acting within the course and scope of their employment is hereby waived from and after July 1, 1993, as to the state, and from and after October 1, 1993, as to political subdivisions; provided, however, immunity of a governmental entity in any such case shall be waived only to the extent of the maximum amount of liability provided for in Section 11-46-15.

(2) For the purposes of this chapter an employee shall not be considered as acting within the course and scope of his employment and a governmental entity shall not be liable or be considered to have waived immunity for any conduct of its employee if the employee's conduct constituted fraud, malice, libel, slander, defamation or any criminal offense other than traffic violations.

(3) For the purposes of this chapter and not otherwise, it shall be a rebuttable presumption that any act or omission of an employee within the time and at the place of his employment is within the course and scope of his employment.

(4) Nothing contained in this chapter shall be construed to waive the immunity of the state from suit in federal courts guaranteed by the Eleventh Amendment to the Constitution of the United States.

SOURCES: Laws, 1984, ch. 495, § 3; reenacted and amended, 1985, ch. 474, § 3; reenacted and amended, 1986, ch. 438, § 2; 1987, ch. 483, § 2; 1988, ch. 442, § 2; 1989, ch. 537, § 2; 1990, ch. 518, § 2; 1991, ch. 618, § 2; 1992, ch. 491 § 4, eff from and after passage (approved May 12, 1992).

Editor's Note—

Laws, 1987, ch. 483, § 50, provides as follows:

"SECTION 50. Section 4, Chapter 495, Laws of 1984, as reenacted and amended by Section 12, Chapter 474, Laws of 1985, as amended by Section 6, Chapter 438, Laws of 1986, which specifies the causes of action that are covered by Chapter 46, Title 11, Mississippi Code of 1972, and specifies the law that governs causes of action that occur prior to the effective date of coverage of Chapter 46, Title 11, Mississippi Code of 1972, is hereby repealed."

Cross references—

Immunity of vocational rehabilitation agency for the blind from suit for damages arising out of the operation of the agency's motor vehicles, see § 37-33-55.

Repeal of provisions requiring motor vehicle liability insurance on department of human service's vehicles on date sovereign immunity of state is waived as provided in this section, see § 37-33-55.

Federal Aspects—

Eleventh Amendment to the Constitution of the United States, see USCS, Constitution, Amendment 11.

Research and Practice References—

18 Am Jur Pl & Pr Forms (Rev), Municipal, School, and State Tort Liability, Forms 1 et seq.

The History and Future of Sovereign Immunity for Mississippi School Districts. 58 Miss L J 275, Fall 1988.

1984 Mississippi Supreme Court Review: Civil Procedure. 55 Miss LJ 49, March, 1985.

Annotations—

Waiver of, or estoppel to assert, failure to give required notice of claim of injury to municipality, county, or other governmental agency or body. 65 ALR2d 1278.

§ 11-46-7. Exclusiveness of remedy; joinder of government employee; immunity for acts or omissions occurring within course and scope of employee's duties; provision of defense for and payment of judgments or settlements of claims against employees; contribution or indemnification by employee.

(1) The remedy provided by this chapter against a governmental entity or its employee is exclusive of any other civil action or civil proceeding by reason of the same subject matter against the governmental entity or its employee or the estate of the employee for the act or omission which gave rise to the claim or suit; and any claim made or suit filed against a governmental entity or its employee to recover damages for any injury for which immunity has been waived under this chapter shall be brought only under the provisions of this chapter, notwithstanding the provisions of any other law to the contrary.

(2) An employee may be joined in an action against a governmental entity in a representative capacity if

the act or omission complained of is one for which the governmental entity may be liable, but no employee shall be held personally liable for acts or omissions occurring within the course and scope of the employee's duties. For the purposes of this chapter an employee shall not be considered as acting within the course and scope of his employment and a governmental entity shall not be liable or be considered to have waived immunity for any conduct of its employee if the employee's conduct constituted fraud, malice, libel, slander, defamation or any criminal offense.

(3) From and after July 1, 1993, as to the state, from and after October 1, 1993, as to political subdivisions, and subject to the provisions of this chapter, every governmental entity shall be responsible for providing a defense to its employees and for the payment of any judgment in any civil action or the settlement of any claim against an employee for money damages arising out of any act or omission within the course and scope of his employment; provided, however, that to the extent that a governmental entity has in effect a valid and current certificate of coverage issued by the board as provided in Section 11-46-17, or in the case of a political subdivision, such political subdivision has a plan or policy of insurance and/or reserves which the board has approved as providing satisfactory security for the defense and protection of the political subdivision against all claims and suits for injury for which immunity has been waived under this chapter, the governmental entity's duty to indemnify and/or defend such claim on behalf of its employee shall be secondary to the obligation of any such insurer or indemnitor, whose obligation shall be primary. The provisions of this subsection shall not be construed to alter or relieve any such indemnitor or insurer of any legal obligation to such employee or to any governmental entity vicariously liable on account of or legally responsible for damages due to the allegedly wrongful error, omissions, conduct, act or deed of such employee.

(4) The responsibility of a governmental entity to provide a defense for its employee shall apply whether the claim is brought in a court of this or any other state or in a court of the United States.

(5) A governmental entity shall not be entitled to contribution or indemnification, or reimbursement for legal fees and expenses from its employee unless a court shall find that the act or omission of the employee was outside the course and scope of his employment. Any action by a governmental entity against its employee and any action by an employee against the governmental entity for contribution, indemnification, or necessary legal fees and expenses shall be tried to the court in the same suit brought on the claim against the governmental entity or its employee.

(6) The duty to defend and to pay any judgment as provided in subsection (3) of this section shall continue after employment with the governmental entity has been terminated, if the occurrence for which liability is alleged happened within the course and scope of duty while the employee was in the employ of the governmental entity.

(7) For the purposes of this chapter and not otherwise, it shall be a rebuttable presumption that any act or omission of an employee within the time and at the place of his employment is within the course and scope of his employment.

(8) Nothing in this chapter shall enlarge or otherwise adversely affect the personal liability of an employee of a governmental entity. Any immunity or other bar to a civil suit under Mississippi or federal law shall remain in effect. The fact that a governmental entity may relieve an employee from all necessary legal fees and expenses and any judgment arising from the civil lawsuit shall not under any circumstances be communicated to the trier of fact in the civil lawsuit.

SOURCES: Laws, 1984, ch. 495, § 5; reenacted and amended, 1985, ch. 474, § 4; reenacted and amended, 1986, ch. 438, § 3; 1987, ch. 483, § 4; 1988, ch. 442, § 4; 1989, ch. 537, § 4; 1990, ch. 518, § 4; 1991, ch. 618, § 4; 1992, ch. 491 § 6; 1993, ch. 476, § 3, eff from and after passage (approved April 1, 1993).

Editor's Note—

Laws, 1987, ch. 483, § 50, provides as follows:

"SECTION 50. Section 4, Chapter 495, Laws of 1984, as reenacted and amended by Section 12, Chapter 474, Laws of 1985, as amended by Section 6, Chapter 438, Laws of 1986, which specifies the causes of action that are covered by Chapter 46, Title 11, Mississippi Code of 1972, and specifies the law that governs causes of action that occur prior to the effective date of coverage of Chapter 46, Title 11, Mississippi Code of 1972, is hereby repealed."

Cross references—

Statute of limitations and notice requirements, see § 11-46-11.

Research and Practice References—

5 Am Jur Proof of Facts 3d, Defamation by Employer, §§ 1 et seq.

The History and Future of Sovereign Immunity for Mississippi School Districts. 58 Miss L J 275, Fall 1988.

§ 11-46-9. Exemption of governmental entity from liability on claims based on specified circumstances.

(1) A governmental entity and its employees acting within the course and scope of their employment or duties shall not be liable for any claim:

(a) Arising out of a legislative or judicial action or inaction, or administrative action or inaction of a legislative or judicial nature;

(b) Arising out of any act or omission of an employee of a governmental entity exercising ordinary care in reliance upon, or in the execution or performance of, or in the failure to execute or perform, a statute, ordinance or regulation, whether or not the statute, ordinance or regulation be valid;

(c) Arising out of any act or omission of an employee of a governmental entity engaged in the performance or execution of duties or activities relating to police or fire protection unless the employee acted in reckless disregard of the safety and well-being of any person not engaged in criminal activity at the time of injury;

(d) Based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a governmental entity or employee thereof, whether or not the discretion be abused;

(e) Arising out of an injury caused by adopting or failing to adopt a statute, ordinance or regulation;

(f) Which is limited or barred by the provisions of any other law;

(g) Arising out of the exercise of discretion in determining whether or not to seek or provide the resources necessary for the purchase of equipment, the construction or maintenance of facilities, the hiring of personnel and, in general, the provision of adequate governmental services;

(h) Arising out of the issuance, denial, suspension or revocation of, or the failure or refusal to issue, deny, suspend or revoke any privilege, ticket, pass, permit, license, certificate, approval, order or similar authorization where the governmental entity or its employee is authorized by law to determine whether or not such authorization should be issued, denied, suspended or revoked unless such issuance, denial, suspension or revocation, or failure or refusal thereof, is of a malicious or arbitrary and capricious nature;

(i) Arising out of the assessment or collection of any tax or fee;

(j) Arising out of the detention of any goods or merchandise by any law enforcement officer, unless such detention is of a malicious or arbitrary and capricious nature;

(k) Arising out of the imposition or establishment of a quarantine, whether such quarantine relates to persons or property;

(l) Of any claimant who is an employee of a governmental entity and whose injury is covered by the Workers' Compensation Law of this state by benefits furnished by the governmental entity by which he is employed;

(m) Of any claimant who is an inmate of any detention center, jail, workhouse, penal farm, penitentiary or other such institution;

(n) Arising out of any work performed by a person convicted of a crime when the work is performed pursuant to any sentence or order of any court or pursuant to laws of the State of Mississippi authorizing or requiring such work;

(o) Under circumstances where liability has been or is hereafter assumed by the United States, to the extent of such assumption of liability, including but not limited to any claim based on activities of the Mississippi National Guard when such claim is cognizable under the National Guard Tort Claims Act of the United States, 32 USC 715 (32 USCS 715), or when such claim accrues as a result of active federal service or state service at the call of the Governor for quelling riots and civil disturbances;

(p) Arising out of a plan or design for construction or improvements to public property, including but not limited to, public buildings, highways, roads, streets, bridges, levees, dikes, dams, impoundments, drainage channels, diversion channels, harbors, ports, wharfs or docks, where such plan or design has been approved in advance of the construction or improvement by the legislative body or governing authority of a governmental entity or by some other body or administrative agency, exercising discretion by authority

to give such approval, and where such plan or design is in conformity with engineering or design standards in effect at the time of preparation of the plan or design;

(q) Arising out of an injury caused solely by the effect of weather conditions on the use of streets and highways;

(r) Arising out of the lack of adequate personnel or facilities at a state hospital or state corrections facility if reasonable use of available appropriations has been made to provide such personnel or facilities;

(s) Arising out of loss, damage or destruction of property of a patient or inmate of a state institution;

(t) Arising out of any loss of benefits or compensation due under a program of public assistance or public welfare;

(u) Arising out of or resulting from riots, unlawful assemblies, unlawful public demonstrations, mob violence or civil disturbances; or

(v) Arising out of an injury caused by a dangerous condition on property of the governmental entity that was not caused by the negligent or other wrongful conduct of an employee of the governmental entity or of which the governmental entity did not have notice, either actual or constructive, and adequate opportunity to protect or warn against; provided, however, that a governmental entity shall not be liable for the failure to warn of a dangerous condition which is obvious to one exercising due care.

(2) A governmental entity shall also not be liable for any claim where the governmental entity:

(a) Is inactive and dormant;

(b) Receives no revenue;

(c) Has no employees; and

(d) Owns no property.

(3) If a governmental entity exempt from liability by subsection (2) becomes active, receives income, hires employees or acquires any property, such governmental entity shall no longer be exempt from liability as provided in subsection (2) and shall be subject to the provisions of this chapter.

SOURCES: Laws, 1984, ch. 495, § 6; reenacted without change, 1985, ch. 474, § 5; 1987, ch. 483, § 5; 1993, ch. 476, § 4; 1994, ch. 334, § 1; 1995, ch. 483, § 1, eff from and after July 1, 1995.

Editor's Note—

Laws, 1987, ch. 483, § 50, provides as follows:

"SECTION 50. Section 4, Chapter 495, Laws of 1984, as reenacted and amended by Section 12, Chapter 474, Laws of 1985, as amended by Section 6, Chapter 438, Laws of 1986, which specifies the causes of action that are covered by Chapter 46, Title 11, Mississippi Code of 1972, and specifies the law that governs causes of action that occur prior to the effective date of coverage of Chapter 46, Title 11, Mississippi Code of 1972, is hereby repealed."

Federal Aspects—

Provisions of the National Guard Tort Claims Act, see 32 USCS § 715.

Research and Practice References—

2A Am Jur Pl & Pr Forms (Rev), Assault and Battery, Form 72.1 (Complaint, petition, or declaration—Assault and battery—Plaintiff shot by police officer during arrest).

19A Am Jur Pl & Pr Forms (Rev), Penal and Correctional Institutions, Form 5.1 (Complaint, petition, or declaration—Against municipal corporation—Failure to prevent suicide of jail inmate—Survival and wrongful death action).

41 Am Jur Trials 1, Social Worker Malpractice for Failure to Protect Foster Children.

1985 Mississippi Supreme Court Review—Administrative Law. 55 Miss L J 735, December 1985.

The History and Future of Sovereign Immunity for Mississippi School Districts. 58 Miss L J 275, Fall 1988.

1984 Mississippi Supreme Court Review: Civil Procedure. 55 Miss LJ 49, March, 1985.

JUDICIAL DECISIONS

When the State is sued to determine whether a state statute or action is unconstitutional, the State cannot be held liable for damages if the conduct falls within one of the exceptions found in § 11-46-9. State v Hinds County Bd. of Supervisors (1994, Miss) 635 So 2d 839.

A county's action seeking a determination of whether § 47-5-112 violated any constitutional rights enjoyed by the county was not barred, since there is no sovereign immunity when the relief sought is a declaration that a particular statute or action of the State is unconstitutional. State v Hinds County Bd. of Supervisors (1994, Miss) 635 So 2d 839.

Sheriff's deputies who obtained a search warrant were shielded from liability by qualified immunity since the action of obtaining the search warrant was discretionary rather than ministerial. Barrett v Miller (1992, Miss) 599 So 2d 559.

Sheriff deputies were not exercising discretionary authority in searching a home where the deputies were acting under a search warrant which gave them the authority to search and set out the parameters in which the search should be carried out; the execution of the search warrant was a ministerial act and required no discretionary decision making, aside from the places in the house to be searched, on the part of the deputies executing the warrant, and therefore the deputies who executed it were not shielded from

liability by qualified immunity. Barrett v Miller (1992, Miss) 599 So 2d 559.

A sheriff's duties with respect to operating a jail and keeping prisoners confined were discretionary in nature and, therefore, the sheriff was entitled to the protection of qualified immunity in a suit to recover for the wrongful death of a victim who was murdered by escaped inmates. McQueen v Williams (1991, Miss) 587 So 2d 918.

Any liability on the part of the Mississippi State Highway Commission for a breach of its implied warranty that plans and specifications to a contractor for resurfacing would provide a reasonably safe highway, was premised upon a tort liability arising from negligently defective plans and specifications, rather than any contractual obligation, and therefore the Commission was immune from suit. Employers Ins. of Wausau v Mississippi State Highway Com. (1990, Miss) 575 So 2d 999, cert den (US) 116 L Ed 2d 46, 112 S Ct 72.

The governor's duties under § 47-5-93 and § 7-1-5(c) and (d) are discretionary and, as such, the governor enjoys a qualified immunity to a civil suit for damages based on the governor's alleged failure to perform his duties under those statutes. McFadden v State (1989, Miss) 542 So 2d 871.

Although ordinarily private individual may not maintain suit against school district to enforce zoning ordinance or to enjoin what is in essence public nuisance created by construction of school building, where construction of school building in violation of municipal offstreet parking ordinance would obstruct abutting landowner's right of ingress and egress, landowner may obtain injunction against construction of building unless and until school district complies with parking ordinance. Robinson v Indianola Municipal Separate School Dist. (1985, Miss) 467 So 2d 911.

§ 11-46-11. Statute of limitations; notice of claim requirements.

(1) After all procedures within a governmental entity have been exhausted, any person having a claim for injury arising under the provisions of this chapter against a governmental entity or its employee shall proceed as he might in any action at law or in equity; provided, however, that ninety (90) days prior to maintaining an action thereon, such person shall file a notice of claim with the chief executive officer of the governmental entity, and, if the governmental entity is participating in a plan administered by the board pursuant to Section 11-46-7(3), such chief executive officer shall notify the board of any claims filed within five (5) days after the receipt thereof.

(2) The notice of claim required by subsection (1) of this section shall be in writing, delivered in person or by registered or certified United States mail. Every notice of claim shall contain a short and plain statement of the facts upon which the claim is based, including the circumstances which brought about the injury, the extent of the injury, the time and place the injury occurred, the names of all persons known to be involved, the amount of money damages sought and the residence of the person making the claim at the time of the injury and at the time of filing the notice.

(3) All actions brought under the provisions of this chapter shall be commenced within one (1) year next after the date of the tortious, wrongful or otherwise actionable conduct on which the liability phase of the action is based, and not after; provided, however, that the filing of a notice of claim as required by subsection (1) of this section shall serve to toll the statute of limitations for a period of ninety-five (95) days. The limitations period provided herein shall control and shall be exclusive in all actions subject to and brought under the provisions of this chapter, notwithstanding the nature of the claim, the label or other characterization the claimant may use to describe it, or the provisions of any other statute of limitations which would otherwise govern the type of claim or legal theory if it were not subject to or brought under the provisions of this chapter.

SOURCES: Laws, 1984, ch. 495, § 7; reenacted without change, 1985, ch. 474, § 6; 1987, ch. 483, § 6; 1988, ch. 479, § 3; 1993, ch. 476, § 5, eff from and after passage (approved April 1, 1993).

Editor's Note—

Laws, 1987, ch. 483, § 50, provides as follows:

"SECTION 50. Section 4, Chapter 495, Laws of 1984, as reenacted and amended by Section 12, Chapter 474, Laws of 1985, as amended by Section 6, Chapter 438, Laws of 1986, which specifies the causes of action that are covered by Chapter 46, Title 11, Mississippi Code of 1972, and specifies the law that governs causes of action that occur prior to the effective date of coverage of Chapter 46, Title 11, Mississippi Code of 1972, is hereby repealed."

Research and Practice References—

The History and Future of Sovereign Immunity for Mississippi School Districts. 58 Miss L J 275, Fall 1988.

1984 Mississippi Supreme Court Review: Civil Procedure. 55 Miss LJ 49, March, 1985.

Annotations—

Insufficiency of notice of claim against municipality as regards statement of place where accident occurred. 69 ALR4th 484.

JUDICIAL DECISIONS

In a personal injury action against a city and city officials, the 6-year statute of limitations set forth in § 15-1-49, rather than the 2-year statute of limitations set forth in § 11-46-11(3) of the Tort Claims Act, applied since the Tort Claims Act had not yet taken effect. Starnes v Vardaman (1991, Miss) 580 So 2d 733.

§ 11-46-13. Jurisdiction; appeals; venue.

(1) Jurisdiction for any suit filed under the provisions of this chapter shall be in the court having original or concurrent jurisdiction over a cause of action upon which the claim is based. The judge of the appropriate court shall hear and determine, without a jury, any suit filed under the provisions of this chapter. Appeals may be taken in the manner provided by law.

(2) The venue for any suit filed under the provisions of this chapter against the state or its employees shall be in the county in which the act, omission or event on which the liability phase of the action is based, occurred or took place. The venue for all other suits filed under the provisions of this chapter shall be in the county or judicial district thereof in which the principal offices of the governing body of the political subdivision are located. The venue specified in this subsection shall control in all actions filed against governmental entities, notwithstanding that other defendants which are not governmental entities may be joined in the suit, and notwithstanding the provisions of any other venue statute that otherwise would apply.

SOURCES: Laws, 1984, ch. 495, § 8; reenacted without change, 1985, ch. 474, § 7; 1987, ch. 483, § 7; 1992, ch. 491 § 1; 1993, ch. 476, § 10, eff from and after passage (approved April 1, 1993).

Editor's Note—

Laws, 1987, ch. 483, § 50, provides as follows:

"SECTION 50. Section 4, Chapter 495, Laws of 1984, as reenacted and amended by Section 12, Chapter 474, Laws of 1985, as amended by Section 6, Chapter 438, Laws of 1986, which specifies the causes of action that are covered by Chapter 46, Title 11, Mississippi Code of 1972, and specifies the law that governs causes of action that occur prior to the effective date of coverage of Chapter 46, Title 11, Mississippi Code of 1972, is hereby repealed."

Research and Practice References—

The History and Future of Sovereign Immunity for Mississippi School Districts. 58 Miss L J 275, Fall 1988.

§ 11-46-15. Limitation of liability; exemplary or punitive damages; interest; attorney's fees; reduction of award.

(1) In any claim or suit for damages against a governmental entity or its employee brought under the provisions of this chapter, the liability shall not exceed the following for all claims arising out of a single occurrence for all damages permitted under this chapter:

(a) For claims or causes of action arising from acts or omissions occurring on or after July 1, 1993, but before July 1, 1997, the sum of Fifty Thousand Dollars ($50,000.00);

(b) For claims or causes of action arising from acts or omissions occurring on or after July 1, 1997, but before July 1, 2001, the sum of Two Hundred Fifty Thousand Dollars ($250,000.00);

(c) For claims or causes of action arising from acts or omissions occurring on or after July 1, 2001, the sum of Five Hundred Thousand Dollars ($500,000.00).

(2) No judgment against a governmental entity or its employee for any act or omission for which immunity is waived under this chapter shall include an award for exemplary or punitive damages or for interest prior to judgment, or an award of attorney's fees unless attorney's fees are specifically authorized by law.

(3) Except as otherwise provided in Section 11-46-17(4), in any suit brought under the provisions of this chapter, if the verdict which is returned, when added to costs and any attorney's fees authorized by law, would exceed the maximum dollar amount of liability provided in subsection (1) of this section, the court shall reduce the verdict accordingly and enter judgment in an amount not to exceed the maximum dollar amount of liability provided in subsection (1) of this section.

SOURCES: Laws, 1984, ch. 495, § 9; reenacted without change, 1985, ch. 474, § 8; 1987, ch. 483, § 8; 1988, ch. 442, § 5; 1989, ch. 537, § 5; 1990, ch. 518, § 5; 1991, ch. 618, § 5; 1992, ch. 491 § 2, eff from and after passage (approved May 12, 1992).

Editor's Note—

Laws, 1987, ch. 483, § 50, provides as follows:

"SECTION 50. Section 4, Chapter 495, Laws of 1984, as reenacted and amended by Section 12, Chapter 474, Laws of 1985, as amended by Section 6, Chapter 438, Laws of 1986, which specifies the causes of action that are covered by Chapter 46, Title 11, Mississippi Code of 1972, and specifies the law that governs causes of action that occur prior to the effective date of coverage of Chapter 46, Title 11, Mississippi Code of 1972, is hereby repealed."

Cross references—
Definition of "employee," see § 11-46-1.
Waiver of immunity, see § 11-46-5.
Provisions relative to insurance coverage in excess of the maximum liability set forth in this section and waiver of such maximum, see § 11-46-17.
Limitations of liability provided herein also available to emergency 911 telephone service suppliers operating within state, see § 19-5-361.

Research and Practice References—
The History and Future of Sovereign Immunity for Mississippi School Districts. 58 Miss L J 275, Fall 1988.
1984 Mississippi Supreme Court Review: Civil Procedure. 55 Miss LJ 49, March, 1985.

§ 11-46-16. Authority to purchase liability insurance; waiver of immunity to extent of insurance coverage.

(1) Any governmental entity, in the discretion of its governing authorities, may purchase and maintain liability insurance to cover wrongful or tortious acts or omissions of such governmental entity or its employees. The authority granted under this subsection (1) shall not affect any similar authority of any governmental entity that is specifically granted by another statute, but any governmental entity having such authority pursuant to another statute shall be governed by that statute and shall be subject to all conditions, restrictions, limitations and provisions of the statute that applies specifically to that governmental entity.

(2) If any governmental entity has in effect liability insurance to cover wrongful or tortious acts or omissions of such governmental entity or its employees, such governmental entity may be sued by anyone affected to the extent of such insurance carried; however, except as otherwise provided in subsection (3) of this section, immunity from suit is only waived to the extent of such liability insurance carried and a judgment creditor shall have recourse only to the proceeds or right to proceeds of such liability insurance. No attempt shall be made in the trial of any case to suggest the existence of any insurance which covers in whole or in part any judgment or award rendered in favor of a claimant, but if the verdict rendered by the jury exceeds the limit of applicable insurance, the court, on motion, shall reduce the amount of the judgment as against the governmental entity only and not as to joint tort-feasors, if any, to a sum equal to the applicable limit stated in the insurance policy.

(3) Except as otherwise provided in Section 19-7-8, Mississippi Code of 1972, a governmental entity which has in effect liability insurance to cover wrongful or tortious acts or omissions of such governmental entity or its employees may, in its discretion, pay any amount of a claim that is within the deductible amount, if any, contained in such liability insurance policy. The determination of whether funds are available to pay any claim that is within the deductible amount and whether to pay a claim in any event shall be within the sole and exclusive discretion of the governmental entity. The authority granted to governmental entities under this subsection does not create a right in any claimant to demand or receive compensation for a claim; and nothing in this subsection shall be considered as a waiver of the immunity granted under Section 11-46-3. The provisions of this subsection only extend to governmental entities the discretionary authority to pay claims that otherwise would not be authorized without an act of the Legislature.

(4) The provisions of this section shall be of no force or effect from and after July 1, 1993, as to the state and, from and after October 1, 1993, shall be of no force or effect as to political subdivisions.

SOURCES: Laws, 1990, ch. 518, § 6; 1992, ch. 491 § 7; 1992 Special Session, ch. 3, § 3, eff from and after passage (approved September 16, 1992).

Research and Practice References—
57 Am Jur 2d, Municipal, County, School, and State Tort Liability §§ 27-32, 680 et seq.
63 CJS, Municipal Corporations §§ 745 et seq.
18 Am Jur Pl & Pr Forms (Rev), Municipal, School, and State Tort Liability, Forms 11-58 (claims and related pleadings; answer or reply-full or qualified sovereign immunity).
13A Am Jur Legal Forms 2d, Municipal, County, State, and School Tort Liability §§ 181:1 (commentary-immunity and waiver of immunity); 181:31 et seq. (claims).

Annotations—
Validity and construction of statute or ordinance limiting the kinds or amount of actual damages recoverable in tort action against governmental unit. 43 ALR4th 19.

§ 11-46-17. Creation of Tort Claims Fund; liability insurance.

(1) There is hereby created in the State Treasury a special fund to be known as the "Tort Claims Fund."

All such monies as the Department of Finance and Administration shall receive and collect under the provisions of subsection (2) of this section and all such funds as the Legislature may appropriate for use by the board in administering the provisions of this chapter shall be deposited in such fund. All monies in the fund may be expended by the board for any and all purposes for which the board is authorized to expend funds under the provisions of this chapter. All interest earned from the investment of monies in the fund shall be credited to the fund. Monies remaining in such fund at the end of a fiscal year shall not lapse into the State General Fund.

(2) From and after July 1, 1993, each governmental entity other than political subdivisions shall participate in a comprehensive plan of self-insurance and/or one or more policies of liability insurance administered by the Department of Finance and Administration. Such plan shall provide coverage to each of such governmental entities for every risk for which the board determines the respective governmental entities to be liable in the event of a claim or suit for injuries under the provisions of this chapter, including claims or suits for injuries from the use or operation of motor vehicles; provided, however, that the board may allow such plan to contain any reasonable limitations or exclusions not contrary to Mississippi state statutes or case law as are normally included in commercial liability insurance policies generally available to governmental entities. In addition to the coverage authorized in the preceding sentence, the plan may provide coverage for liabilities outside the provisions of this chapter, including but not limited to liabilities arising from Sections 1983 through 1987 of Title 42 of the United States Code and liabilities from actions brought in foreign jurisdictions, and the board shall establish limits of coverage for such liabilities. Each governmental entity participating in the plan shall make payments to the board in such amounts, times and manner determined by the board as the board deems necessary to provide sufficient funds to be available for payment by the board of such costs as it incurs in providing coverage for the governmental entity. Each governmental entity of the state other than the political subdivisions thereof participating in the plan procured by the board shall be issued by the board a certificate of coverage whose form and content shall be determined by the board but which shall have the effect of certifying that in the opinion of the board each of such governmental entities is adequately insured.

Prior to July 1, 1993, the Board of Trustees of State Institutions of Higher Learning may provide such liability coverage for each university, department, trustee, employee, volunteer, facility and activity as the board of trustees, in its discretion, shall determine advisable. If liability coverage, either through insurance policies or self-insurance retention is in effect, immunity from suit shall be waived only to the limit of liability established by such insurance or self-insurance program.

From and after July 1, 1993, such liability coverage established by the board of trustees must conform to the provisions of this section and must receive approval from the board. Should the board reject such plan, the board of trustees shall participate in the liability program for state agencies established by the board.

(3) All political subdivisions shall, from and after October 1, 1993, obtain such policy or policies of insurance, establish such self-insurance reserves, or provide a combination of such insurance and reserves as necessary to cover all risks of claims and suits for which political subdivisions may be liable under this chapter; provided, however, that such policy or policies of insurance or such self-insurance may contain any reasonable limitations or exclusions not contrary to Mississippi state statutes or case law as are normally included in commercial liability insurance policies generally available to political subdivisions. All such plans of insurance and/or reserves shall be submitted for approval to the board. The board shall issue a certificate of coverage to each political subdivision whose plan of insurance and/or reserves it approves in the same manner as provided in subsection (2) of this section. Whenever any political subdivision fails to obtain the board's approval of any plan of insurance and/or reserves, the political subdivision shall act in accordance with the rules and regulations of the board and either obtain a satisfactory plan of insurance and/or reserves to be approved by the board.

(4) Any governmental entity of the state may purchase liability insurance to cover claims in excess of the amounts provided for in Section 11-46-15 and may be sued by anyone in excess of the amounts provided for in Section 11-46-15 to the extent of such excess insurance carried; provided, however, that the immunity from suit above the amounts provided for in Section 11-46-15 shall be waived only to the extent of such excess liability insurance carried.

(5) Any two (2) or more political subdivisions are hereby authorized to enter into agreement and to contract between and among themselves for the purpose of pooling their liabilities as a group under this chapter.

Such pooling agreements and contracts may provide for the purchase of one or more policies of liability insurance and/or the establishment of self-insurance reserves and shall be subject to approval by the board in the manner provided in subsections (2) and (3) of this section.

(6) The board shall have subrogation rights against a third party for amounts paid out of any plan of self-insurance administered by such board pursuant to this section in behalf of a governmental entity as a result of damages caused under circumstances creating a cause of action in favor of such governmental entity against a third party. The board shall deposit in the Tort Claims Fund all monies received in connection with the settlement or payment of any claim, including proceeds from the sale of salvage.

SOURCES: Laws, 1984, ch. 495; reenacted and amended, 1985, ch. 474, § 9; reenacted and amended, 1986, ch. 438, § 4; 1987, ch. 483, § 9; 1988, ch. 442, § 6; 1988, ch. 479, § 4; 1989, ch. 537, § 6; 1990, ch. 518, § 7; 1991, ch. 618, § 7; 1992, ch. 491 § 8; 1993, ch. 476, § 6; 1995, ch. 568, § 1, eff from and after passage (approved April 7, 1995).

Editor's Note—

Laws, 1987, ch. 483, § 50, provides as follows:

"SECTION 50. Section 4, Chapter 495, Laws of 1984, as reenacted and amended by Section 12, Chapter 474, Laws of 1985, as amended by Section 6, Chapter 438, Laws of 1986, which specifies the causes of action that are covered by Chapter 46, Title 11, Mississippi Code of 1972, and specifies the law that governs causes of action that occur prior to the effective date of coverage of Chapter 46, Title 11, Mississippi Code of 1972, is hereby repealed."

Cross references—

Duty of government entity to indemnify and/or defend claim on behalf of employee where such entity has certificate of coverage issued under this section, see § 11-46-7.

Reduction of verdicts which, together with costs and fees, exceed $500,000, see § 11-46-15.

Survey of political subdivisions that might be interested in a comprehensive plan liability insurance, see § 11-46-19.

Hiring of administrator for comprehensive plan of self-insurance and/or policies of liability insurance, see § 11-46-19.

Transfer of money from the Accident Contingent Fund authorized by § 37-41-39 to the Tort Claims Fund authorized by this section, see § 11-46-21.

Power and duty of Executive Director of Department of Finance and Administration to coordinate and administer liability plans authorized in this section, see § 27-104-31.

Liability insurance for community hospitals, see § 41-13-11.

Federal Aspects—

Federal laws pertaining to actions for violations of certain laws and deprivation of civil rights, see 42 USCS §§ 1983-1987.

Annotations—

Amount of appropriation as limitation on damages for breach of contract recoverable by one contracting with government agency. 40 ALR4th 998.

§ 11-46-18. Mississippi Tort Claims Board; membership; payment of expenses; officers; meetings.

(1) There is created a board which shall be known as the Mississippi Tort Claims Board. The board shall consist of seven (7) members as follows:

(a) The Governor, subject to the advice and consent of the Senate, shall appoint one (1) member who shall serve at the will and pleasure of the Governor and who shall serve as chairman of the board.

(b) The Director of the Department of Environmental Quality shall be a member of the board.

(c) The Commissioner of Insurance shall be a member of the board.

(d) The Director of the Department of Finance and Administration shall be a member of the board, shall serve as the executive director to the board, and shall be authorized to conduct the administrative affairs of the board.

(e) The Attorney General shall be a member of the board.

(f) The Commissioner of Public Safety shall be a member of the board.

(g) The State Treasurer shall be a member of the board.

(2) The member of the board appointed by the Governor shall receive per diem as provided by Section 25-3-69 and reimbursement of travel expenses as provided in Section 25-3-41 for expenses incurred in carrying out his duties as a member of the Mississippi Tort Claims Board.

(3) The board, by majority vote, shall determine the place and time of its meetings and shall spread the same on its minutes. A majority of the members shall constitute a quorum, and final action of the board shall require the affirmative vote of a majority of those present and voting. The board shall elect a vice chairman who shall preside in the absence or incapacity of the chairman and such other officers as it deems necessary and as established by its rules of order. Extraordinary meetings may be held upon call of the chairman or

upon petition of any four (4) members of the board should the chairman refuse to call a meeting. The initial meeting of the board shall convene upon call of the chairman.

(4) The Lieutenant Governor may designate one (1) Senator and the Speaker of the House of Representatives may designate one (1) Representative to attend any meeting of the Tort Claims Board. The appointing authorities may designate alternate members from their respective houses to serve when the regular designees are unable to attend such meetings of the board. Such legislative designees shall have no jurisdiction or vote on any matter within the jurisdiction of the board. For attending meetings of the board, such legislators shall receive per diem and expenses which shall be paid from the contingent expense funds of their respective houses in the same amounts as provided for committee meetings when the Legislature is not in session; however, no per diem and expenses for attending meetings of the board will be paid while the Legislature is in session. No per diem and expenses will be paid, except for attending meetings of the board, without prior approval of the proper committee in their respective houses.

SOURCES: Laws, 1993, ch. 476, § 7; 1994, ch. 568, § 2, eff from and after passage (approved April 7, 1994).

§ 11-46-19. Powers and duties of board.

(1) The board shall have the following powers:

(a) To provide oversight over the Tort Claims Fund;

(b) To approve any award made from the Tort Claims Fund;

(c) To pay all necessary expenses attributable to the operation of the Tort Claims Fund from such fund;

(d) To assign litigated claims against governmental entities other than political subdivisions to competent attorneys unless such governmental entity has a staff attorney who is competent to represent the governmental entity and is approved by the board; the board shall give primary consideration to attorneys practicing in the jurisdiction where the claim arose in assigning cases; attorneys hired to represent a governmental entity other than a political subdivision shall be paid according to the department fee schedule;

(e) To approve all claimants' attorney fees in claims against the state;

(f) To employ on a full-time basis a staff attorney who shall possess the minimum qualifications required to be a member of the Mississippi Bar, and such other staff as it may deem necessary to carry out the purposes of this chapter; the employees in the positions approved by the board shall be hired by the director, shall be employees of the department, and shall be compensated from the Tort Claims Fund;

(g) To contract with one or more reputable insurance consulting firms as may be necessary;

(h) To purchase any policies of liability insurance and to administer any plan of self-insurance or policies of liability insurance required for the protection of the state against claims and suits brought under this chapter;

(i) To expend money from the Tort Claims Fund for the purchase of any policies of liability insurance and the payment of any award or settlement of a claim against the state under the provisions of this chapter;

(j) To cancel, modify or replace any policy or policies of liability insurance procured by the board;

(k) To issue certificates of coverage to governmental entities, including any political subdivision participating in any plan of liability protection approved by the board;

(l) To review and approve or reject any plan of liability insurance or self-insurance reserves proposed or provided by political subdivisions if such plan is intended to serve as security for risks of claims and suits against them for which immunity has been waived under this chapter;

(m) To administer disposition of claims against the Tort Claims Fund;

(n) To withhold issuance of any warrants payable from funds of a participating state entity should such entity fail to make required contributions to the Tort Claims Fund in the time and manner prescribed by the board;

(o) To develop a comprehensive statewide list of attorneys who are qualified to represent the state and any employee thereof named as a defendant in a claim brought under this chapter against the state or such employee;

(p) To develop a schedule of fees for paying attorneys defending claims against the state or an employee thereof;

(q) To adopt and promulgate such reasonable rules and regulations and to do and perform all such acts as are necessary to carry out its powers and duties under this chapter;

(r) To establish and assess premiums to be paid by governmental entities required to participate in the Tort Claims Fund;

(s) To contract with a third-party administrator to process claims against the state under this chapter; and

(t) To annually submit its budget request to the Legislature as a state agency.

(u) To dispose of salvage obtained in settlement or payment of any claim at fair market value by such means and upon such terms as the board may think best.

(2) Policies of liability insurance purchased for the protection of governmental entities against claims and suits brought under this chapter shall be purchased pursuant to the competitive bidding procedures set forth in Section 31-7-13.

(3) The department shall have the following powers and duties:

(a) To annually report to the Legislature concerning each comprehensive plan of liability protection established pursuant to Section 11-46-17(2). Such report shall include a comprehensive analysis of the cost of the plan, a breakdown of the cost to participating state entities, and such other information as the department may deem necessary.

(b) To provide the board with any staff and meeting facilities as may be necessary to carry out the duties of the board as provided in this chapter.

(c) To submit the board's budget request for the initial year of operation of the board in order to authorize expenditures for the 1993-1994 fiscal year and for the appropriation of such general funds as shall be required for the commencement of its activities.

SOURCES: Laws, 1984, ch. 495, § 11; reenacted and amended, 1985, ch. 474, § 10; 1987, ch. 483, § 10; 1988, ch. 442, § 7; 1988, ch. 479, § 5; 1993, ch. 476, § 8; 1995, ch. 568, § 2, eff from and after passage (approved April 7, 1995).

Editor's Note—

Laws, 1987, ch. 483, § 50, provides as follows:

"SECTION 50. Section 4, Chapter 495, Laws of 1984, as reenacted and amended by Section 12, Chapter 474, Laws of 1985, as amended by Section 6, Chapter 438, Laws of 1986, which specifies the causes of action that are covered by Chapter 46, Title 11, Mississippi Code of 1972, and specifies the law that governs causes of action that occur prior to the effective date of coverage of Chapter 46, Title 11, Mississippi Code of 1972, is hereby repealed."

§ 11-46-20. Tort Claims Board; regulation of liability coverage of governmental entities; annual review of insurance plans; other powers; fees.

(1) The Tort Claims Board shall be charged with the responsibility to regulate all liability coverage of governmental entities required to have certificates of coverage under this chapter which elect to provide the same through a public entity group or individual self-insurance program. This regulation shall be accomplished through an initial approval as provided in Section 11-46-17 and by ongoing or annual review. Each self-insurance program shall annually submit to the Tort Claims Board the following items within ninety (90) days from the end of the group year:

(a) An audited financial statement;

(b) An actuarial valuation;

(c) Contracts with third-party administrators (if any);

(d) Excess insurance policies;

(e) A list of members and premiums due from and collected from each member; and

(f) Other data as may be required by the Tort Claims Board.

(2) Areas of regulation under this section shall include, but not be limited to, the following:

(a) Financial solvency;

(b) Rating plans, rates and rating basis;

(c) Assessment plans of public entity groups;

(d) Coverages offered and excluded;

(e) Deductibles and deductible credits;

(f) Proper purchase of excess insurance or reinsurance; and

(g) Review of losses, reserves and expenses annually.

(3) Individual self-insurers and group public entity self-insurers must provide the data requested for the purposes of this section in order to receive continuing approval of the Tort Claims Board and issuance of annual certificates of coverage to the governmental entities involved.

(4) The Tort Claims Board is authorized to assess and charge appropriate fees for the costs of regulation, as determined by the board, to the individual self-insurers and group public entity self-insurers being regulated.

(5) The Tort Claims Board is empowered to:

(a) Issue cease and desist orders;

(b) Require rate increases or decreases;

(c) Require assessments of members of group public entity self-insurers in such amounts as are authorized and required by the board;

(d) Require changes in excess insurance or reinsurance; or

(e) Take such other actions as deemed necessary by the board to carry out the provisions of this chapter.

SOURCES: Laws, 1994, ch. 568, § 1, eff from and after passage (approved April 7, 1994).

§ 11-46-21. Transfer of funds from Accident Contingent Fund and Tort Claims Fund to Accident Contingent Tort Fund.

All money on deposit on October 1, 1993, in the State Treasury in the fund known as the "Accident Contingent Fund," as authorized by Section 37-41-39, shall be transferred from the Tort Claims Fund to and deposited in a new fund known as the Accident Contingent Tort Fund and shall be accounted for separately. Such Accident Contingent Fund shall no longer exist. The Accident Contingent Tort Fund shall be governed by the provisions of Section 37-41-42. All interest earned from the investment of monies in the fund shall be credited to the fund.

SOURCES: Laws, 1984, ch. 495, § 12; 1985, ch. 474, § 11; 1986, ch. 438, § 5; 1987, ch. 483, § 11; 1988, ch. 442, § 8; 1989, ch. 537, § 7; 1990, ch. 518, § 8; 1992, ch. 491 § 9; 1993, ch. 476, § 9; 1994, ch. 617, § 2, eff from and after passage (approved April 7, 1994).

Editor's Note—

Laws, 1987, ch. 483, § 50, provides as follows:

"SECTION 50. Section 4, Chapter 495, Laws of 1984, as reenacted and amended by Section 12, Chapter 474, Laws of 1985, as amended by Section 6, Chapter 438, Laws of 1986, which specifies the causes of action that are covered by Chapter 46, Title 11, Mississippi Code of 1972, and specifies the law that governs causes of action that occur prior to the effective date of coverage of Chapter 46, Title 11, Mississippi Code of 1972, is hereby repealed."

§ 11-46-23. Provisions of chapter independent and severable.

If any provision or clause of Chapter 46, Title 11, Mississippi Code of 1972, or application thereof is held invalid or unenforceable for any reason, such holding shall have no effect on any other provisions or applications of Chapter 46, Title 11, Mississippi Code of 1972, and to this end the provisions of Chapter 46, Title 11, Mississippi Code of 1972, are declared to be severable.

SOURCES: Laws, 1993, ch. 476, § 11, eff from and after passage (approved April 1, 1993).

TITLE 17

LOCAL GOVERNMENT; PROVISIONS COMMON TO COUNTIES AND MUNICIPALITIES

Chapter 1. Zoning, Planning and Subdivision Regulation

CHAPTER 1

Zoning, Planning and Subdivision Regulation

SEC.
17-1-33. Regional planning commission to advise local municipalities and counties in planning matters.

§ 17-1-33. Regional planning commission to advise local municipalities and counties in planning matters.

The regional planning commission shall act in an advisory capacity to local municipalities and counties in interstate, regional, metropolitan, county and municipal planning matters involving the identification, discussion coordination and recommending solutions or a course of action in connection with problems including, but not limited to land use, water resources, mosquito control, highways, recreational areas, public schools, sewage and garbage disposal, public libraries, urban development, and other matters concerning the acquisition, planning, construction, development, financing, control, use, improvement and disposition of lands, buildings, structures, facilities, goods and services in the interest of public, or for public purposes involving the expenditures of public funds.

SOURCES: Codes, 1942, § 2890.5-03; Laws, 1964, ch. 501, § 3, eff from and after passage (approved May 22, 1964).

Cross references—
General powers of governing authorities in planning and zoning, see § 17-1-3.

TITLE 19

COUNTIES AND COUNTY OFFICERS

Chapter 5. Health, Safety and Public Welfare
Chapter 7. Property and Facilities
Chapter 9. Finance and Taxation
Chapter 25. Sheriffs

CHAPTER 5

Health, Safety and Public Welfare

IN GENERAL

SEC.
19-5-93. Donations for certain patriotic and charitable uses.

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§ 19-5-93. Donations for certain patriotic and charitable uses.

[Until October 1, 1995, this section reads as follows:]

The board of supervisors of each county is hereby authorized, in its discretion, to donate money for the objects and purposes following, to wit:

(a) **Confederate graves.** For the location, marking, care and maintenance of the grave or graves and graveyard of Confederate soldiers or sailors who died in the Confederate service, and the purchase, if necessary, of the land on which any of the said graveyards may be situated, and the erection and maintenance of appropriate monuments and appropriate inscriptions thereon. In the exercise of this power the board is fully authorized to accept donations of land on which any of said graveyards may be situated and also money or funds to be used for any of the purposes in this section expressed.

Any board of supervisors may, in its discretion, contribute money to be used for the upkeep of graves of the Confederate dead in its county.

(b) **Care of the aged.** For the support and maintenance of such residents of the county who are worthy indigent aged inmates of the Old Ladies' Home of Jackson, Mississippi, or of the Golden Age Nursing Home and Hospital for North Mississippi of Greenwood, Mississippi, and not exceeding Five Hundred Dollars ($500.00) per annum for the support of the county's inmates of the Old Men's Home, located near Jackson, Mississippi, and in addition thereto a sum not exceeding Two Hundred Dollars ($200.00) per annum to each of said institutions for their support and maintenance in the care of the aged.

(c) **King's Daughters.** To the King's Daughters in their respective counties for charities under their supervision.

(d) **Travelers Aid Society.** A sum of money not exceeding Fifteen Dollars ($15.00) per month for the support of the organization known as the Travelers Aid Society, provided the same is nonsectarian.

(e) **Hospitals for pellagra sufferers.** For the establishment and maintenance of a hospital for the treatment of persons afflicted with pellagra. For this purpose the board may issue bonds and incur such indebtedness within the limits now authorized by law.

(f) **Tubercular hospitals.** For the establishment and maintenance of a hospital for the care and treatment of persons suffering from tuberculosis. In the execution of this power the board may select trustees

to establish and operate said hospital. In counties having a population of more than forty thousand (40,000) people, as shown by the latest United States census, the board may set aside, appropriate and expend moneys from the general fund for the purpose of aiding in the maintenance and support of hospitals maintained and operated in such county for the care and treatment of persons suffering from tuberculosis. The moneys shall be expended by the board through such trustees, not less than three (3) and not more than five (5), to be elected by the board of supervisors annually. The trustees shall file reports with the board at least once every six (6) months showing in detail all expenditures made by them and the number of patients which have been for the preceding period aided or cared for by the institution, and the board may otherwise require a strict accounting of the administration of said funds.

(g) **Same—additional provisions.** The boards of supervisors of one or more counties are hereby authorized and empowered, in their discretion, separately or jointly, to acquire by gift, purchase or lease, real estate, for tubercular hospital purposes, and to own, erect, build, establish, maintain, regulate and support a tubercular hospital and to remodel buildings on such property to be used for such hospital purposes.

In the event the boards of supervisors of two (2) or more counties agree to cooperate in establishing and maintaining such hospital, the board of supervisors of each of said counties shall adopt a resolution agreeing to the proportionate part each county will contribute to the establishment and maintaining of such hospital.

Each county operating under the provisions of this subsection is hereby authorized and empowered to set aside, appropriate and expend moneys from the general fund for the purpose of erecting, maintaining and operating such hospital.

(h) **Charity wards in hospitals.** A sum of money not exceeding One Hundred Dollars ($100.00) per month to maintain a charity ward or wards in any hospital in their respective counties, or in the event there shall be no hospital in such county, then a like sum, in their discretion, to maintain a charity ward or wards in any hospital in any adjoining county receiving and treating patients from such county having no hospital.

(i) **Same—coast counties.** The several counties of this state bordering on the tidewater of the Gulf of Mexico are hereby authorized and empowered, in the discretion of the proper authorities thereof, to appropriate such a sum of money as said authorities shall deem reasonable, to provide and maintain a charity ward or wards, in any of the hospitals in said counties, or, in the discretion of said authorities, to make and enter into contracts with any such hospitals for the treatment and care in such hospitals of the indigent sick of said counties, and to pay therefor out of the general fund of such counties such sum or sums as shall be a reasonable and just compensation to said hospital. However, the board of supervisors of any county mentioned herein may, in its discretion, make and enter into contracts with any hospital in any adjoining county receiving and treating patients from the respective counties mentioned herein in such hospitals of the indigent sick of said counties, mentioned herein, and to pay therefor out of the general fund of such county, such sum or sums that shall be reasonable and just to said hospitals.

(j) **Public libraries.** A sum not to exceed One Thousand Dollars ($1,000.00) per annum toward the support and maintenance of one or more public libraries situated in the county. In any county whose total assessed valuation, including railroads and all public utilities, is more than Eighteen Million Dollars ($18,000,000.00) the board, in its discretion, may appropriate a sum not to exceed Three Thousand Dollars ($3,000.00) per annum for public libraries.

The board may also give or donate any legislative journals, constitutional convention journals, printed official reports of any state or county officers, official reports of departments, bureaus or officers of the United States, and copies of the acts of the Legislature or laws of Mississippi now or hereafter in the county library of such county and not needed, in the opinion of the board in the county library (but not including any Mississippi reports and not including any acts of the Legislature or laws of the state, unless such acts or laws be more than twenty (20) years old) to any library or library association or foundation or organization maintaining a free public library for reference or otherwise, provided such library, association, foundation or organization owns free from encumbrance a fireproof library building located in this state, in which building said journals, reports, acts and laws may be and shall be deposited where received under this subsection and made accessible under reasonable regulations to the general public. Such library, association, foundation or organization shall not have the right to sell or otherwise dispose of said journals,

reports, acts and laws. Said journals, reports, acts and laws may be returned to the county library from which received without expense to the county, or to the state library, without expense to the state, at any time by the library, association, foundation or organization receiving the same.

Any gift or donation made by the board of supervisors of any county under the authority of this subsection shall be evidenced by an order spread upon the minutes of said board. The county shall bear no expense in connection with any donation. The sheriff of the county, or the custodian of the county library, shall deliver to the representative of the library, association, foundation or organization entitled to receive the same any of said journals, reports, acts, laws and official publications in accordance with the directions contained in any order of the board of supervisors for the delivery of the same, and shall take proper receipt from the party receiving the same, and shall deliver such receipt to the clerk of the board of supervisors of the county, and the board of supervisors shall have the said receipt entered in full on the minutes of the board.

Any library, association, foundation or organization receiving any gift or donation from any county under this subsection shall report in writing to the board of supervisors, from which such gifts or donations have been received every two (2) years, that the gifts and donations so received are still in the possession of the donee and are accessible to the general public. If any of the gifts or donations so received have been lost, destroyed or have otherwise disappeared, report thereof shall be made.

If any library, association, foundation or organization receiving gifts or donations under this subsection shall cease operating as free public library or shall cease to be the owner of a fireproof building in which it keeps and maintains a free public library, for reference or otherwise, the said library, association, foundation or organization shall thereupon immediately return to the county library, without expense to the county, or to the state library, without expense to the state, any gifts or donations it may have received under this subsection.

(k) **Patriotic organizations and memorials.** A sum not to exceed Five Thousand Dollars ($5,000.00) to build or aid any post of the American Legion, any chapter of the Daughters of the American Revolution, any chapter of the United Daughters of the Confederacy, or any post, unit or chapter of any patriotic organization within the county in building a memorial to the veterans of World War I and World War II; and a sum not to exceed One Thousand Dollars ($1,000.00) to aid in defraying the cost of the erection of suitable memorials to deceased soldiers, sailors and marines of the late world wars. Such appropriation may be made, even though no provision has been made therefor in the county budget.

(l) **American Red Cross.** Any board of supervisors of any county in this state is hereby authorized and empowered, in its discretion, to donate annually, out of any moneys in its respective treasury, to be drawn by warrant thereon, a sum not exceeding One Hundred Dollars ($100.00) per million of assessed valuation to the support of a local chapter of the American Red Cross.

(m) **St. Jude Hospital.** For the payment of mileage expense for transporting persons to St. Jude Hospital in Memphis, Tennessee, for treatment. The mileage shall be based on a round-trip basis from the patient's place of residence to St. Jude Hospital at the mileage rate set forth in Section 25-3-41.

(n) **Public museums.** For the support and maintenance of such public museums located in the county constituted under the provisions of Chapter 9, Title 39, Mississippi Code of 1972.

(o) **Domestic violence shelters.** The board of supervisors of any county in this state is hereby authorized and empowered, in its discretion, to donate annually out of any money in the county treasury, such sums as the board deems advisable to support any domestic violence shelter or rape crisis center operating within or serving its area. For the purposes of this section, "rape crisis center" means a place established to provide care, counseling and related services to victims of rape, attempted rape, sexual battery or attempted sexual battery.

(p) **Literacy programs.** The board of supervisors of any county in this state is hereby authorized and empowered, in its discretion, to donate out of the general fund of the county such sum of money as the board deems reasonable to any literacy program being conducted within the county.

[From and after October 1, 1995, this section reads as follows:]

The board of supervisors of each county is hereby authorized, in its discretion, to donate money for the objects and purposes following, to wit:

(a) **Confederate graves.** For the location, marking, care and maintenance of the grave or graves and graveyard of Confederate soldiers or sailors who died in the Confederate service, and the purchase, if necessary, of the land on which any of the said graveyards may be situated, and the erection and maintenance of appropriate monuments and appropriate inscriptions thereon. In the exercise of this power the board is fully authorized to accept donations of land on which any of said graveyards may be situated and also money or funds to be used for any of the purposes in this section expressed.

Any board of supervisors may, in its discretion, contribute money to be used for the upkeep of graves of the Confederate dead in its county.

(b) **Care of the aged.** For the support and maintenance of such residents of the county who are worthy indigent aged inmates of the Old Ladies' Home of Jackson, Mississippi, or of the Golden Age Nursing Home and Hospital for North Mississippi of Greenwood, Mississippi, and not exceeding Five Hundred Dollars ($500.00) per annum for the support of the county's inmates of the Old Men's Home, located near Jackson, Mississippi, and in addition thereto a sum not exceeding Two Hundred Dollars ($200.00) per annum to each of said institutions for their support and maintenance in the care of the aged.

(c) **King's Daughters.** To the King's Daughters in their respective counties for charities under their supervision.

(d) **Travelers Aid Society.** A sum of money not exceeding Fifteen Dollars ($15.00) per month for the support of the organization known as the Travelers Aid Society, provided the same is nonsectarian.

(e) **Hospitals for pellagra sufferers.** For the establishment and maintenance of a hospital for the treatment of persons afflicted with pellagra. For this purpose the board may issue bonds and incur such indebtedness within the limits now authorized by law.

(f) **Tubercular hospitals.** For the establishment and maintenance of a hospital for the care and treatment of persons suffering from tuberculosis. In the execution of this power the board may select trustees to establish and operate said hospital. In counties having a population of more than forty thousand (40,000) people, as shown by the latest United States census, the board may set aside, appropriate and expend moneys from the general fund for the purpose of aiding in the maintenance and support of hospitals maintained and operated in such county for the care and treatment of persons suffering from tuberculosis. The moneys shall be expended by the board through such trustees, not less than three (3) and not more than five (5), to be elected by the board of supervisors annually. The trustees shall file reports with the board at least once every six (6) months showing in detail all expenditures made by them and the number of patients which have been for the preceding period aided or cared for by the institution, and the board may otherwise require a strict accounting of the administration of said funds.

(g) **Same—additional provisions.** The boards of supervisors of one or more counties are hereby authorized and empowered, in their discretion, separately or jointly, to acquire by gift, purchase or lease, real estate, for tubercular hospital purposes, and to own, erect, build, establish, maintain, regulate and support a tubercular hospital and to remodel buildings on such property to be used for such hospital purposes.

In the event the boards of supervisors of two (2) or more counties agree to cooperate in establishing and maintaining such hospital, the board of supervisors of each of said counties shall adopt a resolution agreeing to the proportionate part each county will contribute to the establishment and maintaining of such hospital.

Each county operating under the provisions of this subsection is hereby authorized and empowered to set aside, appropriate and expend moneys from the general fund for the purpose of erecting, maintaining and operating such hospital.

(h) **Charity wards in hospitals.** A sum of money not exceeding One Hundred Dollars ($100.00) per month to maintain a charity ward or wards in any hospital in their respective counties, or in the event there shall be no hospital in such county, then a like sum, in their discretion, to maintain a charity ward or wards in any hospital in any adjoining county receiving and treating patients from such county having no hospital.

(i) **Same—coast counties.** The several counties of this state bordering on the tidewater of the Gulf of Mexico are hereby authorized and empowered, in the discretion of the proper authorities thereof, to appropriate such a sum of money as said authorities shall deem reasonable, to provide and maintain a char-

ity ward or wards, in any of the hospitals in said counties, or, in the discretion of said authorities, to make and enter into contracts with any such hospitals for the treatment and care in such hospitals of the indigent sick of said counties, and to pay therefor out of the general fund of such counties such sum or sums as shall be a reasonable and just compensation to said hospital. However, the board of supervisors of any county mentioned herein may, in its discretion, make and enter into contracts with any hospital in any adjoining county receiving and treating patients from the respective counties mentioned herein in such hospitals of the indigent sick of said counties, mentioned herein, and to pay therefor out of the general fund of such county, such sum or sums that shall be reasonable and just to said hospitals.

(j) **Public libraries.** A sum not to exceed One Thousand Dollars ($1,000.00) per annum toward the support and maintenance of one or more public libraries situated in the county. In any county whose total assessed valuation, including railroads and all public utilities, is more than Eighteen Million Dollars ($18,000,000.00) the board, in its discretion, may appropriate a sum not to exceed Three Thousand Dollars ($3,000.00) per annum for public libraries.

The board may also give or donate any legislative journals, constitutional convention journals, printed official reports of any state or county officers, official reports of departments, bureaus or officers of the United States, and copies of the acts of the Legislature or laws of Mississippi now or hereafter in the county library of such county and not needed, in the opinion of the board in the county library (but not including any Mississippi reports and not including any acts of the Legislature or laws of the state, unless such acts or laws be more than twenty (20) years old) to any library or library association or foundation or organization maintaining a free public library for reference or otherwise, provided such library, association, foundation or organization owns free from encumbrance a fireproof library building located in this state, in which building said journals, reports, acts and laws may be and shall be deposited where received under this subsection and made accessible under reasonable regulations to the general public. Such library, association, foundation or organization shall not have the right to sell or otherwise dispose of said journals, reports, acts and laws. Said journals, reports, acts and laws may be returned to the county library from which received without expense to the county, or to the state library, without expense to the state, at any time by the library, association, foundation or organization receiving the same.

Any gift or donation made by the board of supervisors of any county under the authority of this subsection shall be evidenced by an order spread upon the minutes of said board. The county shall bear no expense in connection with any donation. The sheriff of the county, or the custodian of the county library, shall deliver to the representative of the library, association, foundation or organization entitled to receive the same any of said journals, reports, acts, laws and official publications in accordance with the directions contained in any order of the board of supervisors for the delivery of the same, and shall take proper receipt from the party receiving the same, and shall deliver such receipt to the clerk of the board of supervisors of the county, and the board of supervisors shall have the said receipt entered in full on the minutes of the board.

Any library, association, foundation or organization receiving any gift or donation from any county under this subsection shall report in writing to the board of supervisors, from which such gifts or donations have been received every two (2) years, that the gifts and donations so received are still in the possession of the donee and are accessible to the general public. If any of the gifts or donations so received have been lost, destroyed or have otherwise disappeared, report thereof shall be made.

If any library, association, foundation or organization receiving gifts or donations under this subsection shall cease operating as free public library or shall cease to be the owner of a fireproof building in which it keeps and maintains a free public library, for reference or otherwise, the said library, association, foundation or organization shall thereupon immediately return to the county library, without expense to the county, or to the state library, without expense to the state, any gifts or donations it may have received under this subsection.

(k) **Patriotic organizations and memorials.** A sum not to exceed Five Thousand Dollars ($5,000.00) to build or aid any post of the American Legion, any chapter of the Daughters of the American Revolution, any chapter of the United Daughters of the Confederacy, or any post, unit or chapter of any patriotic organization within the county in building a memorial to the veterans of World War I and World War II; and a sum not to exceed One Thousand Dollars ($1,000.00) to aid in defraying the cost of the erection of suitable memorials to deceased soldiers, sailors and marines of the late world wars. Such appropriation may be made, even though no provision has been made therefor in the county budget.

(l) **American Red Cross.** Any board of supervisors of any county in this state is hereby authorized and empowered, in its discretion, to donate annually, out of any moneys in its respective treasury, to be drawn by warrant thereon, a sum not exceeding One Hundred Dollars ($100.00) per million of assessed valuation to the support of a local chapter of the American Red Cross.

(m) **St. Jude Hospital.** For the payment of mileage expense for transporting persons to St. Jude Hospital in Memphis, Tennessee, for treatment. The mileage shall be based on a round-trip basis from the patient's place of residence to St. Jude Hospital at the mileage rate set forth in Section 25-3-41.

(n) **Public museums.** For the support and maintenance of such public museums located in the county constituted under the provisions of Chapter 9, Title 39, Mississippi Code of 1972.

(o) **Domestic violence shelters.** The board of supervisors of any county in this state is hereby authorized and empowered, in its discretion, to donate annually out of any money in the county treasury, such sums as the board deems advisable to support any domestic violence shelter or rape crisis center operating within or serving its area. For the purposes of this section, "rape crisis center" means a place established to provide care, counseling and related services to victims of rape, attempted rape, sexual battery or attempted sexual battery.

(p) **Literacy programs.** The board of supervisors of any county in this state is hereby authorized and empowered, in its discretion, to donate out of the general fund of the county such sum of money as the board deems reasonable to any literacy program being conducted within the county.

(q) **Care of neglected children.** The board of supervisors of any county in this state, in its discretion, may donate annually out of any money in the county treasury such sums as the board deems advisable to support any residential group home for the abused, abandoned or neglected children which operates within or serves the county. For the purposes of this paragraph the term "residential group home" means a group residence established to provide care and counseling, and to serve as a home, for children who are the victims of abuse, neglect or abandonment.

SOURCES: Codes, Hemingway's 1917, §§ 3798, 3810, 3811; Hemingway's 1921 Supp. § 3811c; 1930, § 290 (a–l); 1942, § 2998; Laws, 1908, ch. 134; 1916, chs. 143, 235; 1918, ch. 205; 1920, ch. 289; 1928, chs. 233, 236; 1930, chs. 33, 56, 185; 1938, ch. 299; 1956, ch. 181; 1958, ch. 212; 1962, ch. 251; 1976, ch. 373; 1983, ch. 331, § 1; 1983, ch. 502, § 8; 1986, ch. 400, § 8; 1990, ch. 318, § 1; 1990, ch. 539, § 2; 1995, ch. 358, § 1, eff from and after October 1, 1995.

Cross references—

Duty of legislature to provide for care of indigent sick, see Miss Const § 86.
Golden Age Nursing Homes, see §§ 19-5-31 et seq.
Establishment and operation of libraries, see §§ 39-3-3, 39-3-5.
Construction of articles, see § 39-3-23.
The interstate library compact, see §§ 39-3-201 et seq.
Power of state board of health to contract with counties and fraternal and benevolent organizations for care of tuberculosis patients, see § 41-33-25.
Power of county to provide treatment for tubercular citizens, see § 41-33-27.
Duty of physician to report cases of tuberculosis, see § 41-33-39.
Domestic violence shelters, generally, see §§ 93-21-101 et seq.
Penalty for unauthorized use of emblems of fraternal organizations, societies, etc., see § 97-19-43.

Research and Practice References—

63 Am Jur 2d, Public Funds §§ 63, 64, 68, 82.

JUDICIAL DECISIONS

County cannot appropriate money to private corporation. Brister v Leflore County (1930) 156 Miss 240, 125 So 816.

CHAPTER 7

Property and Facilities

SEC.
19-7-7. Insurance on county property.
19-7-31. Law libraries.

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§ 19-7-7. Insurance on county property.

The board of supervisors may have the courthouse, jail and other buildings of the county, the furniture thereof, the books of the county, and the personal property of the county, insured against loss by fire, cyclone and tornado, and other hazards. The board of supervisors may carry steam boiler, plate glass and other miscellaneous casualty insurance against loss of county property, as in the discretion of the board of supervisors may seem proper. The cost thereof shall be paid out of the county treasury.

The boards of supervisors of two (2) or more counties may pool their risks under this section and may provide for the purchase of one or more policies of property insurance, or the establishment of a self-insurance fund or self-insurance reserves, or any combination thereof. The cost of participation shall be paid out of the general fund of the county. The administration and service of any such self-insurance program shall be contracted to a third party and approved by the Commissioner of Insurance.

SOURCES: Codes, 1892, § 300; 1906, § 319; Hemingway's 1917, § 3692; 1930, § 233; 1942, § 2909; Laws, 1924, ch. 235; 1930, ch. 9; 1942, ch. 208; 1988, ch. 476, eff from and after passage (approved April 26, 1988).

Cross references—
Authority of municipalities to insure municipal property, see § 21-37-45.
Insurance of school buildings and other school property, see § 37-7-303.

Research and Practice References—
56 Am Jur 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 548.

Attorney General's Opinions—
The board of supervisors are not authorized to carry liability insurance on county automobiles and on its road implements and machinery. The county is not liable for personal injuries and, therefore, would not be authorized to carry insurance for such injuries. Ops Atty Gen 1939—41, p 44.

JUDICIAL DECISIONS

The proceeds of a fire insurance policy on property of the county takes the place of the property, is a trust fund and does not become a part of the general fund. Adams v Helms (1909) 95 Miss 211, 48 So 290.

§ 19-7-31. Law libraries.

The board of supervisors of each county in the state shall have power, by an appropriate order or orders on its minutes, to establish and maintain in the county courthouse or other suitable public building, adjacent or near thereto, a public county law library under such rules, regulations and supervision as it may from time to time ordain and establish, and to that end, the board may accept gifts, grants, donations or bequests of money, furniture, fixtures, books, documents, maps, plats or other property suitable for such purpose.

The board of supervisors shall have power to exchange or sell duplicate volumes or sets of any such books or furniture, and in case of sale to invest the proceeds in other suitable books or furniture. The said board may also purchase or lease from time to time additional books, furniture, or equipment therefor.

For the purpose of providing suitable quarters for such public law library, the said board of supervisors may, in its discretion, expend such sums as may be deemed necessary or proper for such purpose, and may also employ a suitable person as librarian and pay said law librarian such salary as the board, in its discretion, may determine. The board may employ additional librarians or other employees on either a part-time or full-time basis and may pay these additional employees as the board, in its discretion, may determine. The board of supervisors, in their discretion, may contract with the county or municipal library for any staff or facilities as they deem necessary for the overall management and operation of the county law library.

In case such public law library shall be so established, all books, documents, furniture and other property then belonging to the county library, as provided for in Section 19-7-25, shall be transferred to and become part of such public law library, and all books, documents and publications hereafter donated by the state to the county library shall also become a part thereof. And in such case, Sections 19-7-25 and 19-25-65, relating to the county library, shall be superseded in such county so long as such public law library shall be maintained therein.

The board of supervisors of any such county is further authorized, in its discretion, to levy, by way of resolution, additional court costs not exceeding Two Dollars and Fifty Cents ($2.50) per case for each case, both civil and criminal, filed in the chancery, circuit and county courts or any of these in said county, and it is further authorized in its discretion to levy, by way of resolution, additional court costs not exceeding One Dollar and Fifty Cents ($1.50) per case for each case, both civil and criminal, filed in the justice courts of said county for the support of the library therein authorized. If the additional court costs herein authorized be levied, the clerk or judge of said courts shall collect said costs for all cases thereinafter filed in his court and forward same to the chancery clerk who will deposit the same in a special account in a county depository for support and maintenance of said library, and the chancery clerk shall be accountable therefor. However, no such levy shall be made against any cause of action, the purpose of which is to commit any lunatic, alcoholic or narcotic addict to any institution for custodial or medical care, and no such tax shall be collected under this subsection on any cause of action that the proper clerk handling same deems to be in its very nature charitable and in which cause said clerk has not collected his own legal fees.

To accomplish the purposes of this section, the board of supervisors is hereby further authorized and empowered to enter into such arrangement or arrangements with the county bar association of any such county as may seem advisable for the care and operation of said law library and said board may receive and consider, from time to time, such recommendations as the bar association may deem appropriate in the premises.

The board of supervisors of each county in which there are two (2) judicial districts is authorized and empowered, in its discretion, to maintain a law library in each judicial district; in such counties the board is authorized and empowered, in its discretion, to pay from the county general fund or from the special fund herein authorized all such costs herein authorized, provided that the board shall not spend in each judicial district less than the amount of the special court costs authorized herein and collected in each such district.

The governing authorities of any municipality are authorized, in their discretion, by resolution duly adopted and entered on their official minutes, to levy additional court costs not exceeding One Dollar and Fifty Cents ($1.50) per case for each conviction in the municipal court of the municipality for the support and maintenance of the county law library in the county within which the municipality is located. The additional costs shall be collected by the clerk of the court, forwarded to the chancery clerk of the county for deposit in a special account in the county depository, and expended for support and maintenance of the county law library in the same manner and in accordance with the same procedure as provided for costs similarly collected in the chancery, circuit, county and justice courts of the county.

SOURCES: Codes, 1942, §§ 2898-01 to 2898-05, 2899; Laws, 1934 ch. 239; 1948, ch. 268; 1962, ch. 242; 1966 ch. 292, § 1; 1968, ch. 320, §§ 1-5;1972, ch. 330, §§ 1, 2; 1973, ch. 316, § 1; 1974, ch. 424; 1975, ch. 379; 1976, ch. 460; 1977, ch. 408, § 1; 1985, ch. 514, § 2; 1992, ch. 312, § 1, eff from and after October 1, 1992.

Annotations—

Sufficiency of access to legal research facilities afforded defendant confined in state prison or local jail. 23 ALR4th 590.

CHAPTER 9

Finance and Taxation

UNIFORM SYSTEM FOR ISSUANCE OF COUNTY BONDS

SEC.
19-9-1. Purpose of bonds enumerated.

§ 19-9-1. Purpose of bonds enumerated.

The board of supervisors of any county is authorized to issue negotiable bonds of the county to raise money for the following purposes:

(a) Purchasing or erecting, equipping, repairing, reconstructing, remodeling and enlarging county buildings, courthouses, office buildings, jails, hospitals, nurses' homes, health centers, clinics, and related facilities, and the purchase of land therefor;

(b) Erecting, equipping, repairing, reconstructing, remodeling, or acquiring county homes for indigents, and purchasing land therefor;

(c) Purchasing or constructing, repairing, improving and equipping buildings for public libraries and for purchasing land, equipment and books therefor, whether the title to same be vested in the county issuing such bonds or in some subdivision of the state government other than the county, or jointly in such county and other such subdivision;

(d) Establishing county farms for convicts, purchasing land therefor, and erecting, remodeling, and equipping necessary buildings therefor;

(e) Constructing, reconstructing, and repairing roads, highways and bridges, and acquiring the necessary land, including land for road-building materials, acquiring rights-of-way therefor; and the purchase of heavy construction equipment and accessories thereto reasonably required to construct, repair and renovate roads, highways and bridges and approaches thereto within the county;

(f) Erecting, repairing, equipping, remodeling or enlarging or assisting or cooperating with another county or other counties in erecting, repairing, equipping, remodeling, or enlarging buildings, and related facilities for an agricultural high school, or agricultural high school-junior college, including gymnasiums, auditoriums, lunchrooms, vocational training buildings, libraries, teachers' homes, school barns, garages for transportation vehicles, and purchasing land therefor;

(g) Purchasing or renting voting machines and any other election equipment to be used in elections held within the county;

(h) Constructing, reconstructing or repairing boat landing ramps and wharves fronting on the Mississippi Sound or the Gulf of Mexico and on the banks or shores of the inland waters, levees, bays and bayous of any county bordering on the Gulf of Mexico or fronting on the Mississippi Sound, having two (2) municipalities located therein, each with a population in excess of twenty thousand (20,000) in accordance with the then last preceding federal census;

(i) Assisting the Board of Trustees of State Institutions of Higher Learning, the Office of General Services or any other state agency in acquiring a site for constructing suitable buildings and runways and equipping an airport for any state university or other state-supported four-year college now or hereafter in existence in such county;

(j) Aiding and cooperating in the planning, undertaking, construction or operation of airports and air navigation facilities, including lending or donating money, pursuant to the provisions of the airport authorities law, being Sections 61-3-1 through Section 61-3-83, Mississippi Code of 1972, regardless of whether such airports or air navigation facilities are located in the county or counties issuing such bonds;

(k) Establishing rubbish and garbage disposal systems in accordance with the provisions of Sections 19-5-17 through 19-5-27;

(l) Defraying the expenses of projects of the county cooperative service district in which it is a participating county, regardless of whether the project is located in the county issuing such bonds;

(m) Purchasing machinery and equipment which have an expected useful life in excess of ten (10) years. The life of such bonds shall not exceed the expected useful life of such machinery and equipment. Machinery and equipment shall not include any motor vehicle weighing less than twelve thousand (12,000) pounds;

(n) Purchasing fire fighting equipment and apparatus, and providing housing for the same and purchasing land necessary therefor.

The word "bonds," as used in Sections 19-9-1 through 19-9-31, shall be deemed to mean and include bonds, notes, or certificates of indebtedness.

SOURCES: Codes, 1892, § 311; 1906, § 331; Hemingway's 1917, § 3704; 1930, § 247; 1942, § 2926-01; Laws, 1904, ch. 140; 1912, ch. 234; 1932, ch. 204; 1950, ch. 241, § 1; 1954, ch. 360, § 27; 1956, ch. 198; 1957 Ex Ch. 13, § 5; 1966, ch. 293, § 1; 1968, ch. 284; 1973, ch. 446, § 1; 1982, ch. 441; 1989, ch. 519, § 9; 1990, ch. 542, § 1, eff from and after passage (approved April 4, 1990).

Editor's Note—

Section 7-1-451 provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

Cross references—

Bond issue for joint construction of jails by certain counties and municipalities, see § 17-5-1.

Authorization for issuance of bonds for solid or hazardous waste disposal projects, see § 17-17-105.

Issuance by counties of general obligation bonds for solid waste management facilities, see § 17-17-329.

Issuance by counties of bonds for payment of costs for closure, post-closure maintenance or corrective action for solid waste management facilities, see § 17-17-335.

County and municipal appropriations to planning and development districts, see § 17-19-1.

Uniform system for issuance of negotiable notes or certificates of indebtedness, see § 17-21-51.

County Cooperative Service Districts, see §§ 19-3-101 through 19-3-115.

Issuance of bonds by county or regional railroad authority, see § 19-29-29.

Issuance of municipal bonds, see §§ 21-33-301 et seq.

Issuance of duplicates to replace lost or mutilated county warrants, see § 25-55-19.

Applicability of this and following sections to bonds issued for construction of access road or roads to and from sulphur extraction plants in certain counties, see § 27-25-705.

Requirement that plaques on buildings financed with funds of state or political subdivision acknowledge contribution of taxpayers, see § 29-5-151.

Determining validity of bond issues, see § 31-13-5.

Limitation on amount of bond issue, see § 31-15-5.

Method of payment of principal and interest at bank or trust company, see § 31-19-9.

Advertising sale of bonds, see § 31-19-25.

Additional powers granted in connection with issuance of bonds, see § 31-21-5.

Application of the provisions of this section to the Mississippi Development Bank Act, see § 31-25-27.

Authority to borrow money for the purchase of school transportation equipment, etc., see §§ 37-41-89 et seq.

School bonds generally, see §§ 37-59-1 et seq.

Issuance and sale of bonds; election; terms; tax levy, see § 37-113-45.

Issuance and sale of bonds; election; terms; tax levy, see § 37-115-71.

Authority of municipalities to issue bonds for community hospitals, health centers, etc., see § 41-13-19.

County and municipal bonds for pollution control, see §§ 49-17-101 et seq.

Issuance of bonds by the Wavelands Regional Wastewater Management District, see § 49-17-185.

Issuance of bonds by the Mississippi Gulf Coast Regional Wastewater Authority, see § 49-17-325.

Issuance of Bonds; levy of special tax under the Lower Mississippi River Basin Development District, see § 51-21-14.

Issuance of bonds for development of available industrial buildings, see § 57-1-215.

Authority to contribute county funds to airport facilities acquired for the use of universities or colleges, see §§ 61-5-71, 61-5-73.

Municipalities authorized to issue general obligation bonds for airport facilities, see §§ 61-3-3, 61-3-65.

Authority of counties to contribute funds to aid in construction of state highways, see § 65-1-81.

Payment of road bond issues, see §§ 65-15-9 et seq.

Authority of certain counties to issue bonds for erection of sea walls, see §§ 65-33-1 et seq.

Authority to issue refunding bonds to pay for sea walls, see §§ 65-33-61 et seq.

Forgery or counterfeiting of public securities, see § 97-21-9.

Research and Practice References—

64 Am Jur 2d, Public Securities and Obligations §§ 104 et seq.

20 CJS, Counties §§ 258-278.

15 Am Jur Legal Forms 2d, Public Securities and Obligations § 214:15 (resolution determining that public interest and necessity require issuance of public securities).

Annotations—

Power of governmental unit to issue bonds as implying power to refund them. 1 ALR2d 134.

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CHAPTER 25

Sheriffs

SEC.
19-25-65. Sheriff to serve as county librarian.

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§ 19-25-65. Sheriff to serve as county librarian.

The sheriff shall be the custodian of the books other than record books belonging to the county, and he shall keep the Mississippi Department Reports, census reports, statutes of the state, the "Mississippi Reports," digests, and legislative journals assigned to his county in a suitable and safe bookcase in the courtroom of the courthouse. He shall keep them well bound in leather, or stiff boards with leather back and corners, to be paid for out of the county treasury on the order of the board of supervisors, and he shall preserve them in good condition. He shall be fined ten dollars ($10.00) by the court, either circuit or chancery, as for a contempt, for each volume belonging to the county and which has passed into his custody that shall be out of the courtroom at any term of court. He shall also receive and preserve in the same way all books of every kind, maps, charts, and other like things that may be donated to the county by the state, the United States, from individuals or other sources. He shall not permit any of the books in his keeping to be carried out of the courthouse.

The sheriff shall, in case of binding or rebinding of books belonging to the county, cause the statutes of the state to be labeled "Laws of Mississippi," and the year of their enactment shall appear thereon. If the reports and digests or code are rebound, they shall be labeled as they were originally.

In his settlement with the clerk of the board of supervisors for the month of December of each calendar year, the sheriff shall file with the said clerk a sworn itemized statement of the volumes of the Mississippi Reports on hand in the county library on the last business day of said month, and for all volumes missing since the settlement for the previous December the clerk shall debit the said sheriff in his said settlement at the rate of four dollars ($4.00) for each of said missing volumes.

SOURCES: Codes, 1892, §§ 4133, 4134; 1906, §§ 4685, 4686; Hemingway's 1917, §§ 3102, 3103; 1930, §§ 3332, 3333; 1942, §§ 4257, 4258; Laws, 1968, ch. 361, § 66, eff from and after January 1, 1972.

Cross references—
Copies of "Mississippi Reports" furnished by secretary of state, see § 7-3-15.
Documents, reports and books furnished by secretary of state, see §§ 7-3-21 et seq.
Requirement that board of supervisors provide book cases for courtroom, see § 19-7-25.
Establishment of public county law libraries, see § 19-7-31.
Labeling acts of legislature, see § 31-1-19.

TITLE 21

MUNICIPALITIES

Chapter 33. Taxation and Finance
Chapter 37. Streets, Parks and Other Public Property

CHAPTER 33

Taxation and Finance

ARTICLE 5

BONDS

SEC.
21-33-301. Uniform system for issuance of municipal bonds; purposes for which bonds may be issued.

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§ 21-33-301. Uniform system for issuance of municipal bonds; purposes for which bonds may be issued.

The governing authorities of any municipality are authorized to issue negotiable bonds of the municipality to raise money for the following purposes:

(a) Erecting municipal buildings, armories, auditoriums, community centers, gymnasiums and athletic stadiums, preparing and equipping athletic fields, and purchasing buildings or land therefor, and for repairing, improving, adorning and equipping the same, and for erecting, equipping and furnishing of buildings to be used as a municipal or civic arts center;

(b) Erecting or purchasing waterworks, gas, electric and other public utility plants or distribution systems or franchises, and repairing, improving and extending the same;

(c) Purchasing or constructing, repairing, improving and equipping buildings for public libraries and for purchasing land, equipment and books therefor, whether the title to same be vested in the municipality issuing such bonds or in some subdivision of the state government other than the municipality, or jointly in such municipality and other such subdivision;

(d) Establishing sanitary, storm, drainage or sewerage systems, and repairing, improving and extending the same;

(e) Protecting a municipality, its streets and sidewalks from overflow, caving banks and other like dangers;

(f) Constructing, improving or paving streets, sidewalks, driveways, parkways, walkways or public parking facilities, and purchasing land therefor;

(g) Purchasing land for parks, cemeteries and public playgrounds, and improving, equipping and adorning the same, including the constructing, repairing and equipping of swimming pools and other recreational facilities;

(h) Constructing bridges and culverts;

(i) Constructing, repairing and improving wharves, docks, harbors and appurtenant facilities, and purchasing land therefor;

(j) Constructing, repairing and improving public slaughterhouses, markets, pest houses, workhouses, hospitals, houses of correction, reformatories and jails in the corporate limits, or within three (3) miles of the corporate limits, and purchasing land therefor;

(k) Altering or changing the channels of streams and water courses to control, deflect or guide the current thereof;

(l) Purchasing fire-fighting equipment and apparatus, and providing housing for same, and purchasing land therefor;

(m) Purchasing or renting voting machines and any other election equipment needed in elections held in the municipality;

(n) Assisting the Board of Trustees of State Institutions of Higher Learning, the Bureau of Building, Grounds and Real Property Management of the Governor's Office of General Services, or any other state agency in acquiring a site for, constructing suitable buildings and runways and equipping an airport for the university or other state-supported four-year college, now or hereafter in existence, in or near which the municipality is located, within not more than ten (10) miles of the municipality;

(o) Acquiring and improving existing mass transit system; however, no municipal governing authorities shall authorize any bonds to be issued for the acquiring and improving of an existing mass transit system unless an election be conducted in said municipality in the same manner provided for general and special elections, and a majority of the qualified electors of the municipality participating in said election approve the bond issuance for the acquiring and improving of an existing mass transit system;

(p) Purchasing machinery and equipment which have an expected useful life in excess of ten (10) years. The life of such bonds shall not exceed the expected useful life of such machinery and equipment. Machinery and equipment shall not include any motor vehicle weighing less than twelve thousand (12,000) pounds.

The word "bonds" as used in this article shall be deemed to mean and include bonds, notes or certificates of indebtedness.

SOURCES: Codes, 1892, § 3014; 1906, § 3415; Hemingway's 1917, § 5968; 1930, § 2483; 1942, § 3598-01; Laws, 1914, ch. 147; 1928, ch. 207; 1930, ch. 79; 1950, ch. 493, § 1; 1954, ch. 360, § 28; 1957, Ex. Sess., ch. 13, § 6; 1966, ch. 598, § 1; 1971, ch. 400, § 1; 1973, ch. 424, § 1; 1979, ch. 464; 1987, ch. 360, eff from and after passage (approved March 18, 1987).

Editor's Note—

Section 7-1-451 provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

Cross references—

Issuance of bonds to establish convention center, see §§ 17-3-15 et seq.

Authority for bond issue for joint construction of jails by counties and municipalities, see § 17-5-1.

Applicability of uniform system for issuance of municipal bonds to financing of interlocal improvements or projects, see § 17-13-13.

Authorization for issuance of bonds for solid or hazardous waste disposal projects, see § 17-17-105.

Issuance by municipalities of bonds for payment of costs for closure, post-closure maintenance or corrective action for solid waste management facilities, see § 17-17-335.

Uniform system for issuance of negotiable notes or certificates of indebtedness, see §§ 17-21-51.

County supervisors purchasing real estate for courthouses and jails, poor homes and farms, see § 19-7-1.

Purpose and uniform system for issuance of county bonds, see §§ 19-9-1 et seq.

Requirement that county or municipal general obligation bonds for capital expenditures, such as for waste management facilities, comply with provisions of §§ 21-33-301 through 21-33-329, see § 17-17-329.

Municipality's general powers, see § 21-17-1.

General powers of municipality to create, maintain and operate public utilities' systems and transportation system, see § 21-27-23.

Municipalities borrowing money for extension or repair of public utilities' systems, see § 21-27-25.

Procedures for initiating issuance of bonds, see § 21-33-307.

Maturities and interest payable on all municipal bonds, see § 21-33-315.

No diversion of proceeds of bond issues from purpose for which bonds authorized, see § 21-33-317.

Municipality borrowing for current expenses in anticipation of taxes, without notice or election, see § 21-33-325.

Borrowing money to make special improvements, see § 21-41-41.

Limitations on bond issue except as to refunding, see § 31-15-5.

Validation of bonds signed by officials no longer in office, see § 31-19-7.

Tax officials paying matured bonds promptly, see §§ 31-19-9 et seq.

Outstanding bonds being registered by holders, see § 31-19-17.

Advertising sale of bonds, see § 31-19-25.

Additional powers conferred in connection with issuance of bonds, see § 31-21-5.

Application of the provisions of this section to the Mississippi Development Bank Act, see § 31-25-27.

Issuance of bonds for purchase of school transportation equipment, see §§ 37-41-81 et seq.

General provisions regarding school bonds and their purposes, see §§ 37-59-1 et seq.
Issuance of bonds for off-street parking and business district renewal, see §§ 43-35-203 et seq.
County and municipal bonds for pollution control, see §§ 49-17-101 et seq.
Issuance of bonds by the Wavelands Regional Wastewater Management District, see § 49-17-185.
Issuance of bonds by the Mississippi Gulf Coast Regional Wastewater Authority, see § 49-17-325.
Which municipalities authorized to issue general obligation bonds for airport facilities, see §§ 61-3-3, 61-3-65.
Municipal support of airport facilities for state university and colleges, see § 61-5-71.
Municipalities procuring airports, see § 61-5-75.
Issuing bonds to aid in construction of state highways, see § 65-1-81.
What constitutes forgery in connection with public securities, see § 97-21-9.
Municipal revolving fund being available for distribution to municipalities, see § 21-33-401.

Research and Practice References—

56 Am Jur 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 579 et seq.
64 Am Jur 2d, Public Securities and Obligations §§ 94 et seq.
64 CJS, Municipal Corporations §§ 1902 et seq; 1915 et seq.
20A Am Jur Pl & Pr Forms (Rev), Public Securities and Obligations, Form 56 (complaint, petition, or declaration for writ of mandamus to compel levy of taxes to pay outstanding bonded indebtedness).
20A Am Jur Pl & Pr Forms (Rev), Public Securities and Obligations, Form 57 (complaint in federal court alleging diversity of citizenship and seeking to recover principal of municipal bond).
20A Am Jur Pl & Pr Forms (Rev), Public Securities and Obligations, Form 58 (answer alleging illegality of bond).
15 Am Jur Legal Forms 2d, Public Securities and Obligations §§ 214:71 et seq. (sale of bonds).
15 Am Jur Legal Forms 2d, Public Securities and Obligations §§ 214:71 et seq. (bonds, coupons, warrants, and notes).

Annotations—

Power of governmental unit to issue bonds implying power to refund them. 1 ALR2d 134.
Validity of municipal bond issue as against owners of property annexation of which to municipality became effective after date of election at which issue was approved by voters. 10 ALR2d 559.

JUDICIAL DECISIONS

I. UNDER CURRENT LAW

1. In general
2.-5. [Reserved for future use.]

II. UNDER FORMER LAW

6. In general
7. Purposes for which issued
8. Irregularities in issuance
9. Application of statutes of limitation
10. Effect of debt limit on issuance
11. Date of maturity
12. Injunctive relief
13. Judicial review

I. UNDER CURRENT LAW

1. In general

City of Hattiesburg could lawfully proceed with issuance of general obligation industrial park bonds under Chapter 886, Local and Private Laws of Mississippi, Regular Session 1984, which dispenses with the necessity for a bond issue election, except upon petition of 10 percent of the city's registered voters. Brandon v Hattiesburg (1986, Miss) 493 So 2d 324.

2.-5. [Reserved for future use.]

II. UNDER FORMER LAW

6. In general

Where a majority of the qualified electors residing in a consolidated school district, by petition, request issuance of bonds for certain school purposes, it is not necessary to call for an election on the question, in the absence of a request in the petition itself calling for such an election, and the requirement that the bond shall be issued "in the manner provided for by law," in such case, has no reference to the provisions of this section but refers to the details of the issuance. Re Validation Bonds of Orange Grove Consol. School Dist. (1940) 187 Miss 373, 193 So 6.

The issuance of such bonds was not objectionable on the ground that the board sought to issue county-wide bonds for obligations which appeared on the face of the order to be, in large part, the debts of several, separate road districts, where there was nothing in the record to show that during the time such obligations were incurred the public roads in the county were being maintained under any separate district system. Re Validation of Lincoln County Funding Bonds (1940) 187 Miss 392, 193 So 26.

The issuance of such bonds not objectionable on the ground that the debts were invalid based on a presumption that in view of such order the county budget was exceeded, since the condition might have been brought about by this appointment in the collection of expected amounts of taxes and there was no showing in the record as to how the condition was brought about. Re Validation of Lincoln County Funding Bonds (1940) 187 Miss 392, 193 So 26.

A course of conduct pursued by a County Board of Supervisors in incurring debts for county road work when there were insufficient funds in the road fund at the time for the payment of such debts, and in ordering warrants for their payment without funds on hand to be paid out of such moneys as should thereafter come into the road funds, was within the express prohibition of this section, and such debts so incurred could not be the foundation for any action in mandamus for their payment. Edmondson v Board of Sup'rs (1939) 185 Miss 645, 187 So 538.

Holder of county warrant on game and fish fund, held entitled to compel board of supervisors by mandamus to issue and sell bonds of county in sufficient amount to pay warrant, after game and fish laws repealed. Tucker Printing Co. v Board of Sup'rs (1934) 171 Miss 608, 158 So 336.

Bank, which advanced funds with which school district purchased land for teachers' home, took trust deed to secure loan, and collected interest thereon without petition or election by qualified voters as required by statute, held accountable in representative suit by taxpayers for interest collected and without any rights against school district since loan was void. Toler v Love (1934) 170 Miss 252, 154 So 711.

But company selling goods to county held not entitled to mandatory order requiring board of supervisors to issue bonds to pay claim, where seller did not show it would be entitled as matter of right to have clerk issue warrant if money were available to pay

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it. American Oil Co. v Bishop (1932) 163 Miss 249, 141 So 271, sugg of error overr 163 Miss 257, 141 So 765.

Lack or insufficiency of funds necessary to pay county indebtedness incurred under positive statute, and road and bridge obligations arising out of emergency, held not to invalidate indebtedness and obligations. Choctaw County v Tennison (1931) 161 Miss 66, 134 So 900.

Validity of items of outstanding warrants and obligations cannot be adjudicated by chancellor in county bond validation proceeding, such objections constituting collateral attacks on county board's judgment. Harvey v Covington County (1931) 161 Miss 765, 138 So 403 (followed in Hegwood v Smith County (1932, Miss) 140 So 223).

Failure of State's bond attorney to attend hearing in county bond validation proceeding did not invalidate proceeding. Harvey v Covington County (1931) 161 Miss 765, 138 So 403.

The board of mayor and aldermen may order the issuance of bonds at an adjourned regular meeting. Green v Hutson (1925) 139 Miss 471, 104 So 171.

A county having outstanding obligations may issue bonds to obtain money to pay same. Crenshaw v Jackson (1920) 122 Miss 711, 84 So 912.

The legislature may authorize the city to issue bonds for the construction and equipment of a hospital on a majority vote and it shall pass general laws under which cities may be chartered without violating the Constitution of the state. Feemster v Tupelo (1920) 121 Miss 733, 83 So 804.

The Supreme Court may take judicial notice of the conflict in opinion among people of the county on the question of issuing bonds for public improvement. Madison County v Howard (1918) 119 Miss 133, 80 So 524.

This section does not require the board of supervisors to issue serial bonds to take up outstanding loan warrants for the payment of which current taxes are pledged. Board of Sup'rs v Bourgeois (1918) 118 Miss 163, 79 So 91.

The issuance of county funding bonds for the payment of outstanding and unpaid obligations of the county could not be attacked on the ground that some of the obligations were not incurred in the manner provided by law, where the order of the board of supervisors for the issuance of such bonds in reciting its investigation and findings as to the validity of the items as obligations of the county was sufficient to give such obligations the dignity required by this section, without reciting the antecedent and evidentiary facts. Re Validation of Lincoln County Funding Bonds (1940) 187 (Miss) 392, 193 So 26.

7. Purposes for which issued

Sections 3598 and 6416, Code 1942, authorizing issuance of municipal bonds for purpose of erecting school buildings and purchasing lands authorize use of funds to construct stadium and athletic field, provided they are appropriate, proper, and necessary to comply with courses in physical education prescribed by board of education, department of education and trustees of schools under §§ 6423, 6665, 6666, and 6670, Code of 1942. Nichols v Calhoun (1948) 204 Miss 291, 37 So 2d 313.

Although a municipality has not legally declared itself to be a separate school district, it may under its charter powers purchase lands for school purposes and construct school buildings and issue bonds for such purposes. Bingham v Woodell (1915) 109 Miss 769, 69 So 678.

A city may prepare for the construction of a waterworks plant four years before the expiration of a franchise of a waterworks company in the city without an abuse of its discretion. Griffith v Mayor & Board of Aldermen (1912) 102 Miss 1, 58 So 781.

A municipality is limited to the purposes for which bonds may be issued and to the amount authorized. Hazlehurst v Mayes (1910) 96 Miss 656, 51 So 890.

Under an earlier statute, bonds could not be issued for the purpose of buying real estate for public parks. Hazlehurst v Mayes (1910) 96 Miss 656, 51 So 890.

Municipal bonds may be issued for the purpose of paving streets in the business portion of the municipality and a tax can be rightfully laid upon all the taxable property in the municipality to pay for them. Maybin v Biloxi (1900) 77 Miss 673, 28 So 566.

Under an eariler form of this provision it was held that the restrictive provisions of the last paragraph of Code 1892, § 4014 (Code 1906, § 4534), limit both the preceding paragraphs, and the provision in the second paragraph as to the levying and collecting of taxes to erect and repair schoolhouses, is not additional to the powers to issue bonds for that purpose contained in this section. Boguechitto v Lewis (1898) 75 Miss 741 (19 23 So 549.

8. Irregularities in issuance

Bona fide holders of municipal bonds regular on their face are protected against informalities and irregularities in proceedings authorized in the issuance of the bonds and from mistakes of the municipal authorities. Greene v Rienzi (1905) 87 Miss 463, 40 So 17.

A municipality may estop itself from setting up irregularities in their issuance as a defense to its bonds. Town Council of Lexington v Union Nat. Bank (1897) 75 Miss 1, 22 So 291.

9. Application of statutes of limitation

The failure of this statute to make reference to any statute of limitations did not have the effect of waiving, as to all obligations of a county incurred after its enactment, a statute providing that statutes of limitations should begin to run in favor of the state, counties and municipal corporations at the time when the plaintiff had the first right to demand payment. Fuqua v Board of Supervisors (1941) 192 Miss 6, 4 So 2d 350.

The six-year statute of limitations was applicable to the right of a teacher in an agricultural high school to demand payment of salary from the proceeds of bonds to be issued by the county and to compel issuance of such bonds by mandamus upon failure of the board of supervisors (which was not shown to have ever been advised of the existence of the obligation until suit was filed), otherwise to do so. Fuqua v Board of Supervisors (1941) 192 Miss 6, 4 So 2d 350.

10. Effect of debt limit on issuance

In the issuance of funding bonds for the payment of claims against a supervisor's district, county boards of supervisors must find as a jurisdictional fact that the proposed funding bonds, when added to a county's outstanding bonded indebtedness, shall not exceed 10 per cent of the assessed valuation of taxable property within the county, and set forth such fact in its order before the bonds can validly be issued or validated. Brown v Board of Sup'rs (1939) 185 Miss 216, 187 So 738

The failure of the county board of supervisors to affirmatively adjudicate in an order providing for the issuance of funding bonds to pay certain claims or debts incurred by a supervisor's district that the debt incurred, when added to all of the then outstanding indebtedness of the supervisor's district, both bonded and floating, did not result in the imposition upon any of the property in such district of an indebtedness for road purposes of more than 10 per cent of the assessed value of such property, as ascertained by the last completed assessment for taxation, constituted fatal error and rendered such order of the board null and void, on its face, and subject to attack in a proceeding for validation of such bonds. Brown v Board of Sup'rs (1939) 185 Miss 216, 187 So 738.

Where the chancellor was in error in rendering a decree of validation as to issuance of certain funding bonds in payment of claims against a supervisor's district because the order of the board for such issuance was void because of the violation of § 4321, a decree would be reversed without prejudice to the right of the county to provide for the payment of such indebtedness by the

legal issuance of other bonds under this section, or in such other manner as might be authorized by law. Brown v Board of Sup'rs (1939) 185 Miss 216, 187 So 738.

Proposed county bonds to take up outstanding county obligations were "funding" and not "refunding" bonds, and therefore limited to ten per cent of assessed value of taxable property of county. Lee v Hancock County (1938) 181 Miss 847, 178 So 790, 179 So 559. sugg of error overr 181 Miss 859, 179 So 559.

"Refunding bond" is a bond issued to pay off an older issue; to "refund a debt" meaning to fund it again or anew; the word "fund" in this connection meaning to convert into a more or less permanent debt bearing regular interest. Lee v Hancock County (1938) 181 Miss 847, 178 So 790, sugg of error overr 181 Miss 859, 179 So 559.

11. Date of maturity

Funding bonds for outstanding obligations issued under this section are not subject to the limitation that their maturity shall not run beyond ten years, applicable to funding bonds to discharge an indebtedness incurred on anticipation tax obligations. Re Validation of Lincoln County Funding Bonds (1940) 187 Miss 392, 193 So 26.

A case with reference to bond issue by Leflore County holding that this statute does not require bonds to begin to mature at the expiration of the 1st year after their issuance. Robertson v Board of Sup'rs (1919) 119 Miss 621, 81 So 408.

12. Injunctive relief

A resident taxpayer of the municipality may enjoin the wrongful issuance of municipal bonds. Clarksdale v Broaddus (1900) 77 Miss 667, 28 So 954.

13. Judicial review

Where a petition for a writ of certiorari, filed in the circuit court, after a decree in chancery court validating the issuance of county funding bonds, was confined in the same record, made by the board of supervisors, which the chancery court had before it in the validation proceedings, disposition of an appeal from the chancery court would not be stayed. Re Validation of Lincoln County Funding Bonds (1940) 187 Miss 392, 193 So 26.

An appeal by taxpayers to the circuit court from orders and allowances made by the board of supervisors with respect to the issuance of county funding bonds was improper, where the bill of exceptions failed to set forth the facts in full and was not signed by the president of the board as the law required, and items which should have been entered and a statement as to their correctness was left to the clerk. Re Validation of $50,000 Serial Funding Bonds (1940) 187 Miss 512, 193 So 449.

An appeal to the circuit court by taxpayers from orders and allowances made by the county board of supervisors with respect to the issuance of county funding bonds was ineffective, where the chancery court had acquired jurisdiction of the whole matter in a validation proceeding. Re Validation of $50,000 Serial Funding Bonds (1940) 187 Miss 512, 193 So 449.

With respect to an appeal to the circuit court by taxpayers from orders and allowances of a board of supervisors with respect to issuance of county funding bonds, a party having a claim to be allowed or having been allowed by the board is an interested party on an appeal to the circuit court, and separate appeals from all orders must be prosecuted where an appeal has been taken, and the bill of exceptions must either be filed during the court term or meeting of the board of supervisors or within such time as the law or the board might allow for filing such bill and appeal. Re Validation of $50,000 Serial Funding Bonds (1940) 187 Miss 512, 193 So 449.

The right of a taxpayer to prosecute appeals from orders and allowances by a board of supervisors in connection with the issuance of funding bonds to matters in which he has no pecuniary or property interest is limited. Re Validation of $50,000 Serial Funding Bonds (1940) 187 Miss 512, 193 So 449.

The chancery court, having acquired jurisdiction of a proceeding on validation of county funding bonds, erred in dismissing the proceedings, in view of the fact that it had the power to pass upon the legality of the bond issue in all respects, including the various claims constituting the alleged indebtednesses, and an appeal by the taxpayers to the circuit court during the pendency of such proceeding in the chancery court was improper. Re Validation of $50,000 Serial Funding Bonds (1940) 187 Miss 512, 193 So 449.

In the absence of an appeal from an order of the board of county supervisors adjudicating the validity of certain claims, for the payment of which an order for the issuance of funding bonds was made, no objections could be taken on appeal from a decree validating such bonds based on the ground that the indebtednesses for the payment of which the bonds were to be issued did not constitute valid, legal and undisputed outstanding obligations of a supervisor's district for the reason that such indebtednesses were incurred in violation of § 4321 prohibiting the incurring of an indebtedness unless there is sufficient money at the time in the particular fund from which allowance for the payment thereof is to be made, since the chancellor had no jurisdiction to pass on the validity of such claim and such objection constituted a collateral attack on the orders and judgments of the board of supervisors. Brown v Board of Sup'rs (1939) 185 Miss 216, 187 So 738.

CHAPTER 37

Streets, Parks and Other Public Property

SEC.

21-37-19. Public library.
21-37-20. Contributions to public library outside corporate limits by municipality without public library.

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§ 21-37-19. Public library.

The governing authorities of municipalities shall have the power to maintain one or more libraries for public use, and to regulate the use thereof.

SOURCES: Codes, 1892, § 2965; 1906, § 3361; Hemingway's 1917, § 5858; 1930, § 2438; 1942, § 3374-147; Laws, 1950, ch. 491, § 147, eff from and after July 1, 1950.

Cross references—

Exercise of eminent domain by municipality, see § 21-37-47.
Details of state-wide library service, see §§ 39-3-1 et seq.

Research and Practice References—

26 Am Jur 2d, Eminent Domain § 62.
29A CJS, Eminent Domain § 62.
62 CJS, Municipal Corporations § 679.
11 Am Jur Trials 189, Condemnation of Urban Property.

§ 21-37-20. Contributions to public library outside corporate limits by municipality without public library.

The governing authorities of any municipality which has no public library located within its corporate limits, in their discretion, may make contributions from any available funds of the municipality for the support, upkeep and maintenance of any public library which is located outside of the corporate limits of the municipality and which provides services to a public junior college or state institution of higher learning.

SOURCES: Laws, 1988, ch. 414, eff from and after July 1, 1988.

TITLE 25

Public Officers and Employees; Public Records

Chapter 1. Public Officers; General Provisions
Chapter 3. Salaries and Compensation
Chapter 4. Ethics in Government
Chapter 7. Fees
Chapter 41. Open Meetings
Chapter 51. State Depository for Public Documents
Chapter 61. Public Access to Public Records

CHAPTER 1

Public Officers; General Provisions

SEC.
25-1-85. Departments and agencies allowed to purchase and operate automobiles; guidelines for purchase relating to energy efficiency.

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§ 25-1-85. Departments and agencies allowed to purchase and operate automobiles; guidelines for purchase relating to energy efficiency.

The following state departments, agencies or institutions are hereby allowed to purchase, own and operate, in strict accordance with the provisions hereof, passenger vehicles not to exceed the following numbers:

Agriculture and Commerce	23
Department of Economic and Community Development	14
Experiment Stations	16
Extension Service	1
Forestry Commission	48
Department of Transportation	115
Military Department	5
Department of Corrections	13
Parole Board	2
Mississippi Department of Public Safety	600
Division of Plant Industry	23
State Board of Mental Health	2
East Mississippi State Hospital	1
Mississippi State Hospital	2
Alcoholic Beverage Control Division of the Mississippi State Tax Commission	30
Soil and Water Conservation Commission	2

Agriculture and Commerce	23
Ellisville State School	1
North Mississippi Retardation Center	1
South Mississippi Retardation Center	1
Board of Health	10
State Oil and Gas Board	3
Each institution of higher learning, for police purposes, provided each institution with more than 6,000 students may have 4	2
Wildlife, Fisheries and Parks	60
Surplus Property Procurement Commission	4
State Tax Commission-station wagons	2
State Tax Commission-automobiles	6
Mississippi Gaming Commission	50
Department of Environmental Quality	12
Pearl River Valley Water Supply District	7
Pearl River Basin Development District	2
Pat Harrison Waterway District	1
Department of Transportation - Office of State Aid Road Construction	9
Tennessee-Tombigbee Waterway Development Authority	2
Fair Commission	1
State Civil Defense Office (including communications vehicle)	4
Bureau of Narcotics	62
Mississippi State Port Authority at Gulfport	6
Tombigbee Water Supply District	3
Board of Pharmacy	4
Yellow Creek State Inland Port Authority	1
Boat and Water Safety Commission	2
Department of Archives and History	2
Department of Youth Services	1
State Fire Fighters Academy (station wagon)	1
Office of Capitol Facilities - Capitol Police	2
Office of Building, Grounds and Real Property	1
State Veterans Affairs Board	9
Employment Security Commission	1
Forest Product Utilization Lab	1
Mississippi Board of Nursing	3
Certified Development Company of Mississippi, Inc	1
State Board of Medical Licensure	4

Agriculture and Commerce	23
Mississippi Public Employees' Retirement System	3
Mississippi Public Service Commission	42
Department of Human Services (van)	1
Department of Rehabilitation Services	4
Real Estate Commission	1
Mississippi Library Commission - station wagons	5

Except as provided in Sections 25-1-77 through 25-1-93, no state department, institution or agency shall purchase, operate or maintain any passenger vehicle out of any funds available for the use of such department, institution or agency, unless same has been or may be donated.

All new passenger vehicles purchased by any state department, institution, agency, university, community or junior college, or local governing authority, except vehicles purchased to be used for law enforcement purposes by the law enforcement departments of the Mississippi Highway Safety Patrol, Mississippi Department of Transportation, Public Service Commission, Tax Commission, State Institutions of Higher Learning, and Department of Wildlife, Fisheries & Parks, and vehicles used for law enforcement purposes by local governing authorities, shall be of a fuel-efficient model which meets the needs of the using entity. No such new passenger vehicles purchased shall be luxury vehicles, utility, carryall or full-size vehicles as defined by the industry, unless the executive head of the purchasing entity first declares that a special need exists and/or special circumstances exist which require transportation of passengers in conditions requiring a luxury, utility, carryall or full-size vehicle. Upon receipt of such declaration, the Public Procurement Review Board created under Section 27-104-7 shall disallow the purchase by state agencies if adequate justification is not provided. Approval from the Public Procurement Review Board is not required for purchases by local governing authorities. Furthermore, power windows, power door locks and power seats may not be added as options to any vehicle purchased by any state agency unless adequate justification is provided. It is the intent of the Legislature that each such passenger vehicle purchased be the most prudent possible and still adequately meet the needs for which the vehicle is purchased. The term "passenger vehicle" shall not be construed to mean trucks or motor-driven equipment whose primary use is not the transportation of passengers.

For purposes of this section, passenger vehicle shall be defined as a vehicle which is designed to transport four (4) or more persons and/or provides adequate seating for at least four (4) persons. The terms "luxury vehicle," "full-size vehicle," "utility vehicle" and "carryall vehicle" shall be as defined by the industry.

Prior to January 1, 1996, the Department of Finance and Administration, Office of Purchasing and Travel, in cooperation with the Office of the Auditor, Property Control Division, shall prepare an inventory of vehicles owned by all state departments, agencies or institutions. The inventory shall include but is not limited to the name of the agency or institution and the quantity and primary use of vehicles in each of the following categories: subcompact, compact sedan, mid-size sedan, full-size sedan, utility vehicle, carryall vehicle, compact pick-up, mid-size pick-up, one-half ton pick-up, three-quarter ton pick-up, one ton pick-up, passenger van, cargo van, bus, other. This inventory shall be used by the 1996 Legislature to determine the need for limitations on the quantities of vehicles in each category for each entity.

Nothing in Sections 25-1-77 through 25-1-93 shall be construed to prohibit agencies, departments and institutions from purchasing and operating passenger vehicles when used exclusively to transport patients, prisoners, students, faculty or staff of state institutions, blind and sighted employees essential to operate blind training programs or material, products and client-trainees in the sheltered workshop program, or bookmobiles. The superintendents of the Columbia Training School and Oakley Training School, or staff members designated by them, may use such passenger vehicles for other official functions and operations of those institutions at their discretion. Passenger vehicles or similar vehicles used for any other purposes shall be considered as automobiles and subject to the restrictions set forth in the aforesaid sections.

In addition to the motor vehicles authorized to be owned and operated by the Mississippi Department of Public Safety, said department is also authorized to receive, own and operate special purpose motor vehicles to be used solely in investigations.

Of the motor vehicles authorized to be owned and operated by the Mississippi Highway Safety Patrol, no more than twenty-one (21) vehicles may be kept for use by administrative personnel of the patrol whose principal duties are performed at the Highway Safety Patrol Headquarters Building and the Drivers' License Examining Station in Hinds County to commute to and from the residence of said personnel to the office at which such duties are regularly performed.

Of the motor vehicles authorized to be owned and operated by the Mississippi Department of Transportation, not more than five (5) vehicles may be kept for use by administrative personnel of the department to commute between their residences and the offices at which their duties are regularly performed. The executive director of the department is authorized to allow additional department personnel to commute to and from their residences in department vehicles due to the nature of their job and for the safety of the traveling public.

Of the motor vehicles authorized to be owned and operated by the State Tax Commission, no more than four (4) vehicles may be kept for use by administrative personnel whose principal duties are performed at State Tax Commission offices in Hinds County to commute to and from the residence of said personnel to the office at which such duties are regularly performed.

The provisions of Chapter 226, Laws of 1964, remain in force and are not affected by this section.

Any state officer, employee or board member who violates any of the foregoing provisions of Sections 25-1-77 through 25-1-85 shall be liable on his or her official bond for the total amount of the purchase price of the passenger vehicle, plus the total amount of funds expended in violation of said sections for the operating costs of such vehicle.

SOURCES: Codes, 1942, § 4061-07; Laws, 1950, ch. 448, § 7; 1952, ch. 358; 1956, ch. 370; 1958, ch. 467; 1962, chs. 497, 498, § 10; 1964, ch. 567, § 1; 1966, ch. 649, § 17, 1968, ch. 500, § 1; 1970, ch. 479, § 1; 1972, ch. 438, § 1; 1973, ch. 480, § 1; 1974, ch. 559 § 1; 1976, ch. 472; 1979, ch. 448; 1980, ch. 436; 1981, ch. 327, § 1; 1981, ch. 366, § 7; 1983, ch. 392, § 1; 1984, ch. 354, § 3; 1984, ch. 475; 1984, ch. 488, § 167; 1985, ch. 485, § 1; 1987, ch. 496; 1988, ch. 378; 1989, ch. 512, § 1; 1990, ch. 515, § 1; 1991, ch. 530, § 7; 1991, ch. 595, § 1; 1992, ch. 496, § 24; 1993, ch. 555, § 1; 1994, ch 651, § 1; 1995, ch. 543, § 1, eff from and after July 1, 1995.

Editor's Note—

Section 37-33-153 provides that wherever the term "State Department of Rehabilitation Services" appears in any law it shall mean the Department of Human Services.

Section 43-27-2 provides that the term "Department of Youth Services" shall mean the "Department of Human Services".

Section 57-10-167 provides that the Certified Development Company of Mississippi, Inc., shall be known as the Mississippi Business Finance Corporation from and after July 1, 1989.

Cross references—

Official bonds, see § 25-1-13.

Reports concerning state-owned automobiles, see § 25-1-81.

Specific powers and duties of state tax commission, see § 27-3-1 et seq.

Specific powers and duties of bureau of narcotics, see §§ 41-29-107.

Authority of state oil and gas board to purchase, own and operate automobiles, see § 53-1-17.

Exemption of state-owned automobiles from motor vehicle safety-responsibility provisions, see § 63-15-5.

Research and Practice References—

60A CJS, Motor Vehicles §§ 441(1)-441(3).

CHAPTER 3

Salaries and Compensation

GENERAL PROVISIONS

SEC.
25-3-33. Salaries of appointive state and district officials.
25-3-35. Salaries of elected judiciary.

§ 25-3-33. Salaries of appointive state and district officials.

The annual salaries of the following appointive state and district officials and employees are hereby fixed as follows:

Deputy Attorney General, not to exceed	57,200.00
Assistant Attorneys General shall each receive annual salaries in an amount to be fixed by the Attorney General but not to exceed	52,800.00
Military Department—National Guard:	
Adjutant General	50,400.00
Department of Banking and Consumer finance:	
Commissioner	59,200.00
Commissioner of Savings Associations	45,600.00
Chairman of the State Tax Commission (Commissioner of Revenue)	70,000.00
Associate Commissioners, each	38,400.00
Director of Emergency Management Agency	43,600.00
Highway Safety Patrol:	
Commissioner of Public Safety	58,000.00
Chief of Highway Patrol	49,600.00
Department of Human Services:	
Director, not to exceed	75,421.00
Workers' Compensation Commission:	
Members, each	64,000.00
Executive Director	56,600.00
Administrative Judge, each	52,800.00

Archives and History:	
Director, not to exceed	58,000.00
State Forester	60,200.00
State Oil and Gas Board:	
Secretary-Supervisor	61,600.00
Educational Television Authority:	
Executive Director	58,000.00
Director, Mississippi Library Commission, not to exceed	58,000.00
Executive Secretary, Public Service Commission	43,600.00
Parole Board:	
Chairman	46,000.00
Administrative Assistant for Parole Matters	39,600.00
Members, each	43,000.00
Governor's Office-Federal State Programs:	
Coordinator Federal State Programs	55,440.00
Governor's State Bond Advisory Division:	
Director	46,200.00
Employment Security Commission:	
Executive Director, not to exceed	61,600.00
Executive Director, Department of Mental Health, to be determined by the State Board of Mental Health, not to exceed	72,300.00
Director, Division of Medicaid, not to exceed	66,000.00
Director, State Department of Transportation, not to exceed	80,125.44
State Entomologist	52,800.00
Clerk of the Supreme Court	47,200.00
State Aid Engineer, Division of State Aid Road Construction	59,346.00
Executive Director, Judicial Performance Commission	51,156.00
Executive Director, Department of Finance and Administration	75,760.00
Superintendent, Mississippi School for the Blind, to be determined by the State Board of Education, not to exceed	60,000.00
Superintendent, Mississippi School for the Deaf, to be determined by the State Board of Education, not to exceed	60,000.00

Executive Director, State Fair Commission	49,599.00
Executive Director, Department of Wildlife, Fisheries and Parks	71,005.00
Executive Director, Department of Environmental Quality	71,005.00
Executive Director, Pat Harrison Waterway District	53,714.00
Executive Director, Pearl River Basin Development District	51,703.00
Executive Director, Pearl River Valley Water Supply District	60,836.00
Executive Director, Tombigbee River Valley Water Management District	52,208.00
Director, Soil and Water Conservation Commission	40,470.00
Commissioner, Mississippi Department of Corrections	68,572.00
Executive Director, State Central Data Processing Authority	77,294.00
Executive Director, Mississippi Industries for the Blind	53,109.00
Director, Mississippi Bureau of Narcotics	49,121.00
Executive Secretary, State Veterans Affairs Board	44,723.00
Executive Officer, Veterans' Home Purchase Board	51,427.00
Chief Administrative Officer, Motor Vehicle Commission	52,179.00
Stadium Manager, Mississippi Veterans Memorial Stadium	49,152.00
Executive Director, Mississippi Arts Commission	44,287.00

SOURCES: Codes, 1942, § 4175.1; Laws, 1970, ch. 402, § 2; 1974, ch. 545, § 2; 1978, ch. 520, § 3; 1979, ch. 512, § 4; 1980, ch. 496, § 12, ch. 475, § 4; 1983, ch. 536, § 2; 1984, ch. 514; 1988, ch. 528, § 3; 1989, 1st Ex Sess, ch. 3, § 8; 1993, ch. 587, § 3, eff from and after July 1, 1993.

Editor's Note—

Section 31-11-1 provides that wherever the term "state building commission" or "building commission" appears in the laws of the state of Mississippi, it shall be construed to mean the governor's office of general services. Section 7-1-451, however, provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

Section 43-1-1 provides that the term "State Department of Public Welfare" or "State Board of Public Welfare" shall mean the Department of Human Services.

Chapter 622 of Laws, 1995 (§ 25-53-3) changed the name of the "Central Data Processing Authority" (CDPA) to the "Mississippi Department of Information Technology Services" (MDITS) and provided that wherever the terms "Central Data Processing Authority" and "authority", when referring to the Central Data Processing Authority, are used in any law, the same shall mean the Mississippi Department of Information Technology Services.

Cross references—

Compensation of assistant secretaries of state, see § 7-3-71.

Salary of state superintendent of education prior to July 1, 1984, see § 25-3-31.

Provision that no state officer or employee shall be compensated in excess of the salary fixed for the governor, see § 25-3-39.

Research and Practice References—

63A Am Jur 2d, Public Officers and Employees §§ 431 et seq.

§ 25-3-35. Salaries of elected judiciary.

[From and after July 1, 1993, and until July 1, 1994, this section will read as follows:]

The annual salaries of the following judges are hereby fixed as follows, to begin at the commencement of the next term of office immediately succeeding the existing term:

Chief Justice of the Supreme Court	$88,400.00
Presiding Justice of the Supreme Court	86,400.00
Associate Justices of the Supreme Court	85,800.00

However, in addition to their present official duties, there are hereby imposed upon the Supreme Court Justices the extra duties of making a special study of existing laws and reporting to each regular session of the Legislature such constructive suggestions as they may deem necessary for the improvement of the administration of justice, and of advising and counseling with the State Librarian in the selection of law books for purchase and use in the State Law Library, advising with the librarian thereof upon the removal from the library of any books which may be the least frequently used, and for the placing of same in a convenient location so as to provide additional space for such books and other current publications which may be more frequently used or called for. For such extra services each justice, from and after July 1, 1989, shall receive a sum sufficient when added to the present salaries of said justices to aggregate Eighty-eight Thousand Four Hundred Dollars ($88,400.00) for the Chief Justice, Eighty-six Thousand Four Hundred Dollars ($86,400.00) for the Presiding Justice, and Eighty-five Thousand Eight Hundred Dollars ($85,800.00) for Associate Justices, per annum. As each existing term expires and the above-captioned salaries become effective in due course, the extra duties and compensation provided for shall cease.

(2) The annual salaries of the chancery and circuit court judges are hereby fixed as follows:

Chancery Judges, each	$76,200.00
Circuit Judges, each	76,200.00

Provided further, in addition to their present official duties, there are hereby imposed upon the chancery and circuit court judges the extra duties of making a special study of existing laws relating to trial courts and reporting to the Supreme Court of the State of Mississippi such constructive suggestions as they may deem necessary for the improvement of the administration of justice, which shall be recommended to the Legislature by the Supreme Court in the manner provided by law. Said judges shall advise and supervise in the purchase of law books for the libraries of each district, and shall study and evaluate the inventory of books and facilities now existing in the libraries of each district to effect the removal and relocation of obsolete publications so as to provide additional space for those books and current publications more frequently used. Said judges shall study the existing rules promulgated by the circuit and chancery court judicial associations governing the operation of chancery and circuit courts, and revise the same pursuant to existing laws. For such extra services each judge, from and after July 1, 1989, shall receive a sum sufficient when added to the present salaries of said judges to aggregate Seventy-six Thousand Two Hundred Dollars ($76,200.00) per annum for each judge. Upon the expiration of the existing term, the above-captioned salaries become effective in due course, and the extra duties and compensation provided for shall cease.

(3) The Supreme Court shall prepare a payroll for chancery judges and circuit judges and submit such payroll to the Department of Finance and Administration.

[From and after July 1, 1994, this section will read as follows:]

(1) The annual salaries of the following judges are hereby fixed as follows, to begin at the commencement of the next term of office immediately succeeding the existing term:

Chief Justice of the Supreme Court	$93,400.00
Presiding Justice of the Supreme Court	91,400.00
Associate Justices of the Supreme Court	90,800.00

However, in addition to their present official duties, there are hereby imposed upon the Supreme Court Justices the extra duties of making a special study of existing laws and reporting to each regular session of the Legislature such constructive suggestions as they may deem necessary for the improvement of the administration of justice, and of advising and counseling with the State Librarian in the selection of law books for purchase and use in the State Law Library, advising with the librarian thereof upon the removal from the library of any books which may be the least frequently used, and for the placing of same in a convenient location so as to provide additional space for such books and other current publications which may be more frequently used or called for. For such extra services each justice, from and after July 1, 1989, shall receive a sum sufficient when added to the present salaries of said justices to aggregate Ninety-three

Thousand Four Hundred Dollars ($93,400.00) for the Chief Justice, Ninety-one Thousand Four Hundred Dollars ($91,400.00) for the Presiding Justice, and Ninety Thousand Eight Hundred Dollars ($90,800.00) for Associate Justices, per annum. As each existing term expires and the above-captioned salaries become effective in due course, the extra duties and compensation provided for shall cease.

(2) The annual salaries of the judges of the Court of Appeals of Mississippi are hereby fixed as follows:

Chief Judge of the Court of Appeals	$86,800.00
Associate Judges of the Court of Appeals each	84,000.00

(3) The annual salaries of the chancery and circuit court judges are hereby fixed as follows:

Chancery Judges, each	$81,200.00
Circuit Judges, each	81,200.00

Provided further, in addition to their present official duties, there are hereby imposed upon the chancery and circuit court judges the extra duties of making a special study of existing laws relating to trial courts and reporting to the Supreme Court of the State of Mississippi such constructive suggestions as they may deem necessary for the improvement of the administration of justice, which shall be recommended to the Legislature by the Supreme Court in the manner provided by law. Said judges shall advise and supervise in the purchase of law books for the libraries of each district, and shall study and evaluate the inventory of books and facilities now existing in the libraries of each district to effect the removal and relocation of obsolete publications so as to provide additional space for those books and current publications more frequently used. Said judges shall study the existing rules promulgated by the circuit and chancery court judicial associations governing the operation of chancery and circuit courts, and revise the same pursuant to existing laws. For such extra services each judge, from and after July 1, 1989, shall receive a sum sufficient when added to the present salaries of said judges to aggregate Eighty-one Thousand Two Hundred Dollars ($81,200.00) per annum for each judge. Upon the expiration of the existing term, the above-captioned salaries become effective in due course, and the extra duties and compensation provided for shall cease.

(4) The Supreme Court shall prepare a payroll for chancery judges and circuit judges and submit such payroll to the Department of Finance and Administration.

SOURCES: Codes, 1942, § 4175.5; Laws, 1966, ch. 445, § 2; 1970, ch. 402, § 3; 1974, ch. 351; 1978, ch. 520, § 4; 1983, ch. 536, § 3; 1988, ch. 528, § 4; 1991, ch. 373, § 3; 1993, ch. 481, § 5; 1993, ch. 518, § 32, eff from and after passage (approved April 15, 1993).

Editor's Note—

The United States Attorney General, by letter dated May 14, 1993, interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws, 1993, ch. 481, § 5.

Cross references—

Provision that no state officer or employee shall be compensated in excess of the salary fixed for the governor, see § 25-3-39.

Applicability of compensation and travel expense provisions for circuit court judges to judges of the Mississippi Court of Military Appeals, see § 33-13-417.

Research and Practice References—

63A Am Jur 2d, Public Officers and Employees §§ 431 et seq.

48A CJS, Judges §§ 12, 13, 14, 75-85.

CHAPTER 4

Ethics in Government

ARTICLE 3

CONFLICT OF INTEREST; IMPROPER USE OF OFFICE

SEC.

25-4-101. Declaration of public policy.
25-4-103. Definitions.
25-4-105. Certain actions, activities and business relationships prohibited or authorized; contracts in violation of section voidable.
25-4-107. Complaints; where brought; removal; initiated by; defendant's right to jury trial.
25-4-109. Penalties; elected and nonelected public servants.
25-4-111. Authority head to take action against public servant who has violated article; conditions imposed upon former public servant.
25-4-113. Civil action for damages against violator of article; forfeiture or pecuniary benefit; costs and attorneys' fees.
25-4-115. Civil liability not precluded.
25-4-117. Criminal liability not precluded.
25-4-119. Officials not to derive pecuniary benefits as result of official duties; penalties.

§ 25-4-101. Declaration of public policy.

The legislature declares that elective and public office and employment is a public trust and any effort to realize personal gain through official conduct, other than as provided by law, or as a natural consequence of the employment or position, is a violation of that trust. Therefore, public servants shall endeavor to pursue a course of conduct which will not raise suspicion among the public that they are likely to be engaged in acts that are in violation of this trust and which will not reflect unfavorably upon the state and local governments.

SOURCES: Laws, 1983, ch. 469, § 1, eff from and after July 1, 1983.

Cross references—

Authority of the ethics commission to issue advisory opinions with regard to any standard of conduct set forth in this section, see § 25-4-17.

Public officials and their partners or associates prohibited from deriving profit from issuance of bonds or disposition of property under provisions governing construction and improvement of public facilities, see § 29-17-31.

Public officials not to derive income from issuance of bonds by Mississippi Home Corporation, see § 43-33-763.

JUDICIAL DECISIONS

A public servant with purely ministerial duties and with no power to vote on matters considered by the governmental entity with which he or she is associated is not considered a "member" of that entity as the term is applied in §§ 25-4-101 et seq of the Ethics in Government laws. Moore ex rel. Chickasaw County v McCullough (1993, Miss) 633 So 2d 421.

§ 25-4-103. Definitions.

The following definitions apply in this article unless the context otherwise requires:

(a) "Authority" means any component unit of a governmental entity.

(b) "Benefit" means any gain or advantage to the beneficiary, including any gain or advantage to a third person pursuant to the desire or consent of the beneficiary.

(c) "Business" means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, holding company, self-employed individual, joint stock company, receivership, trust or other legal entity or undertaking organized for economic gain, a nonprofit corporation or other such entity, association or organization receiving public funds.

(d) "Business with which he is associated" means any business of which a public servant or his relative

is an officer, director, owner, partner, employee or is a holder of more than ten percent (10%) of the fair market value or from which he or his relative derives more than One Thousand Dollars ($1,000.00) in annual income or over which such public servant or his relative exercises control.

(e) "Compensation" means money or thing of value received, or to be received, from any person for services rendered.

(f) "Contract" means:

(i) Any agreement to which the government is a party; or

(ii) Any agreement on behalf of the government which involves the payment of public funds.

(g) "Government" means the state and all political entities thereof, both collectively and separately, including but not limited to:

(i) Counties;

(ii) Municipalities:

(iii) All school districts;

(iv) All courts; and

(v) Any department, agency, board, commission, institution, instrumentality, or legislative or administrative body of the state, counties or municipalities created by statute, ordinance or executive order including all units that expend public funds.

(h) "Governmental entity" means the state, a county, a municipality or any other separate political subdivision authorized by law to exercise a part of the sovereign power of the state.

(i) "Income" means money or thing of value received, or to be received, from any source derived, including but not limited to, any salary, wage, advance, payment, dividend, interest, rent, forgiveness of debt, fee, royalty, commission or any combination thereof.

(j) "Intellectual property" means any formula, pattern, compilation, program, device, method, technique or process created primarily as a result of the research effort of an employee or employees of an institution of higher learning of the State of Mississippi.

(k) "Material financial interest" means a personal and pecuniary interest, direct or indirect, accruing to a public servant or spouse, either individually or in combination with each other. Notwithstanding the foregoing, the following shall not be deemed to be a material financial interest with respect to a business with which a public servant may be associated:

(i) Ownership of any interest of less than ten percent (10%) in a business where the aggregate annual net income to the public servant therefrom is less than One Thousand Dollars ($1,000.00);

(ii) Ownership of any interest of less than two percent (2%) in a business where the aggregate annual net income to the public servant therefrom is less than Five Thousand Dollars ($5,000.00);

(iii) The income as an employee of a relative if neither the public servant or relative is an officer, director or partner in the business and any ownership interest would not be deemed material pursuant to subparagraph (i) or (ii) herein; or

(iv) The income of the spouse of a public servant when such spouse is a contractor, subcontractor or vendor with the governmental entity that employs the public servant and the public servant exercises no control, direct or indirect, over the contract between the spouse and such governmental entity.

(l) "Pecuniary benefit" means benefit in the form of money, property, commercial interests or anything else the primary significance of which is economic gain. Expenses associated with social occasions afforded public servants shall not be deemed a pecuniary benefit.

(m) "Person" means any individual, firm, business, corporation, association, partnership, union or other legal entity, and where appropriate a governmental entity.

(n) "Property" means all real or personal property.

(o) "Public funds" means money belonging to the government.

(p) "Public servant" means:

(i) Any elected or appointed official of the government;

(ii) Any officer, director, commissioner, supervisor, chief, head, agent or employee of the government or any agency thereof, or of any public entity created by or under the laws of the state of Mississippi or created by an agency or governmental entity thereof, any of which is funded by public funds or which expends, authorizes or recommends the use of public funds; or

(iii) Any individual who receives a salary, per diem or expenses paid in whole or in part out of funds authorized to be expended by the government.

(q) "Relative" means the spouse, child or parent.

(r) "Securities" means stocks, bonds, notes, convertible debentures, warrants, evidences of debts or property or other such documents.

SOURCES: Laws, 1983, ch. 469, § 2 [See Editor's Note below]; 1991, ch. 572 § 1, eff from and after passage (approved April 12, 1991); 1992, ch. 530, § 9, eff from and after July 1, 1992.

Editor's Note—

Laws, 1984, ch. 482, § 2, proposed to amend section 25-4-103, effective from and after the date Senate Concurrent Resolution No. 548 of the 1984 regular session of the Mississippi legislature (Chapter 655, Laws, 1984) was ratified by the electorate in November, 1984. Senate Concurrent Resolution No. 548 (Chapter 655, Laws, 1984) proposed to amend § 109 of the Mississippi Constitution, and to repeal §§ 107 and 210 of the Mississippi Constitution. The Senate Concurrent Resolution No. 548 was submitted to the electorate for ratification in November, 1984, but was rejected; thus the proposed amendment to § 25-4-103 never became effective.

Cross references—

Authority of the ethics commission to issue advisory opinions with regard to any standard of conduct set forth in this section, see § 25-4-17.

Prohibition against public official deriving income from issuance of bonds under Mississippi Major Economic Impact Act, see § 57-75-25.

Application of this section to prohibition against giving any pecuniary benefit to the public service commission, its staff or employees, see § 77-1-11.

JUDICIAL DECISIONS

A public servant with purely ministerial duties and with no power to vote on matters considered by the governmental entity with which he or she is associated is not considered a "member" of that entity as the term is applied in §§ 25-4-101 et seq of the Ethics in Government laws. Moore ex rel. Chickasaw County v McCullough (1993, Miss) 633 So 2d 421.

§ 25-4-105. Certain actions, activities and business relationships prohibited or authorized; contracts in violation of section voidable.

[Until Laws, 1994, ch. 586, § 1, or Laws, 1994, ch. 625, § 1, are effectuated under Section 5 of the Voting Rights Act of 1965, this section reads as follows:]

(1) No public servant shall use his official position to obtain pecuniary benefit for himself other than that compensation provided for by law, or to obtain pecuniary benefit for any relative or any business with which he is associated.

(2) No public servant shall be interested, directly or indirectly, during the term for which he shall have been chosen, or within one (1) year after the expiration of such term, in any contract with the state, or any district, county, city or town thereof, authorized by any law passed or order made by any board of which he may be or may have been a member.

(3) No public servant shall:

(a) Be a contractor, subcontractor or vendor with the governmental entity of which he is a member, other than in his contract of employment, or have a material financial interest in any business which is a contractor, subcontractor or vendor with the governmental entity of which he is a member.

(b) Be a purchaser, direct or indirect, at any sale made by him in his official capacity or by the governmental entity of which he is an officer or employee, except in respect of the sale of goods or services when provided as public utilities or offered to the general public on a uniform price schedule.

(c) Be a purchaser, direct or indirect, of any claim, certificate, warrant or other security issued by or to be paid out of the treasury of the governmental entity of which he is an officer or employee.

(d) Perform any service for any compensation during his term of office or employment by which he attempts to influence a decision of the authority of the governmental entity of which he is a member.

(e) Perform any service for any compensation for any person or business after termination of his office or employment in relation to any case, decision, proceeding or application with respect to which he was directly concerned or in which he personally participated during the period of his service or employment.

(4) Notwithstanding the provisions of subsection (3) of this section, a public servant or his relative:

(a) May be an officer or stockholder of banks or savings and loan associations or other such financial institutions bidding for bonds, notes or other evidences of debt or for the privilege of keeping as depositories the public funds of a governmental entity thereof or the editor or employee of any newspaper in which legal notices are required to be published in respect to the publication of said legal notices.

(b) May be a contractor or vendor with any authority of the governmental entity other than the authority of the governmental entity of which he is an officer or employee or have a material financial interest in a business which is a contractor or vendor with any authority of the governmental entity other than the authority of the governmental entity of which he is an officer or employee where such contract is let to the lowest and best bidder after competitive bidding and three (3) or more legitimate bids are received or where the goods or services involved are reasonably available from two (2) or fewer commercial sources, provided such transactions comply with the public purchases laws.

(c) May be a subcontractor with any authority of the governmental entity other than the authority of the governmental entity of which he is an officer or employee or have a material financial interest in a business which is a subcontractor with any authority of the governmental entity other than the authority of the governmental entity of which he is an officer or employee where the primary contract is let to the lowest and best bidder after competitive bidding or where such goods or services involved are reasonably available from two (2) or fewer commercial sources, provided such transactions comply with the public purchases laws.

(d) May be a contractor, subcontractor or vendor with any authority of the governmental entity of which he is an officer or employee or have a material financial interest in a business which is a contractor, subcontractor or vendor with any authority of the governmental entity of which he is an officer or employee: (i) where such goods or services involved are reasonably available from two (2) or fewer commercial sources, provided such transactions comply with the public purchases laws; or (ii) where the contractual relationship involves the further research, development, testing, promotion or merchandising of an intellectual property created by the public servant.

(e) May purchase securities issued by the governmental entity of which he is an officer or employee if such securities are offered to the general public and are purchased at the same price as such securities are offered to the general public.

(f) May have an interest less than a material financial interest in a business which is a contractor, subcontractor or vendor with any governmental entity.

(g) May contract with the Mississippi Veteran's Home Purchase Board, Mississippi Housing Finance Corporation, or any other state loan program, for the purpose of securing a loan; however, public servants shall not receive favored treatment.

(h) May be employed by or receive compensation from an authority of the governmental entity other than the authority of the governmental entity of which the public servant is an officer or employee.

(i) If a member of the Legislature or other public servant employed on less than a full-time basis, may represent a person or organization for compensation before an authority of the governmental entity other than an authority of the governmental entity of which he is an officer or employee.

(5) No person may intentionally use or disclose information gained in the course of or by reason of his official position or employment as a public servant in any way that could result in pecuniary benefit for himself, any relative, or any other person, if the information has not been communicated to the public or is not public information.

(6) Any contract made in violation of this section may be declared void by the governing body of the contracting or selling authority of the governmental subdivision or a court of competent jurisdiction and the contractor or subcontractor shall retain or receive only the reasonable value, with no increment for profit or commission, of the property or the services furnished prior to the date of receiving notice that the contract has been voided.

(7) Any person violating the provisions of this section shall be punished as provided for in Sections 25-4-109 and 25-4-111.

[Section 25-4-105, as amended by Laws, 1994, ch. 586, § 1, effective upon effectuation under Section 5 of the Voting Rights Act of 1965, as amended and extended, reads as follows:]

(1) No public servant shall use his official position to obtain pecuniary benefit for himself other than that

compensation provided for by law, or to obtain pecuniary benefit for any relative or any business with which he is associated.

(2) No public servant shall be interested, directly or indirectly, during the term for which he shall have been chosen, or within one (1) year after the expiration of such term, in any contract with the state, or any district, county, city or town thereof, authorized by any law passed or order made by any board of which he may be or may have been a member.

(3) No public servant shall:

(a) Be a contractor, subcontractor or vendor with the governmental entity of which he is a member, officer, employee or agent, other than in his contract of employment, or have a material financial interest in any business which is a contractor, subcontractor or vendor with the governmental entity of which he is a member, officer, employee or agent.

(b) Be a purchaser, direct or indirect, at any sale made by him in his official capacity or by the governmental entity of which he is an officer or employee, except in respect of the sale of goods or services when provided as public utilities or offered to the general public on a uniform price schedule.

(c) Be a purchaser, direct or indirect, of any claim, certificate, warrant or other security issued by or to be paid out of the treasury of the governmental entity of which he is an officer or employee.

(d) Perform any service for any compensation during his term of office or employment by which he attempts to influence a decision of the authority of the governmental entity of which he is a member.

(e) Perform any service for any compensation for any person or business after termination of his office or employment in relation to any case, decision, proceeding or application with respect to which he was directly concerned or in which he personally participated during the period of his service or employment.

(4) Notwithstanding the provisions of subsection (3) of this section, public servant or his r relative:

(a) May be an officer or stockholder of banks or savings and loan associations or other such financial institutions bidding for bonds, notes or other evidences of debt or for the privilege of keeping as depositories the public funds of a governmental entity thereof or the editor or employee of any newspaper in which legal notices are required to be published in respect to the publication of said legal notices.

(b) May be a contractor or vendor with any authority of the governmental entity other than the authority of the governmental entity of which he is a member, officer, employee or agent or have a material financial interest in a business which is a contractor or vendor with any authority of the governmental entity other than the authority of the governmental entity of which he is a member, officer, employee or agent where such contract is let to the lowest and best bidder after competitive bidding and three (3) or more legitimate bids are received or where the goods or services involved are reasonably available from two (2) or fewer commercial sources, provided such transactions comply with the public purchases laws.

(c) May be a subcontractor with any authority of the governmental entity other than the authority of the governmental entity of which he is a member, officer, employee or agent or have a material financial interest in a business which is a subcontractor with any authority of the governmental entity other than the authority of the governmental entity of which he is a member, officer, employee or agent where the primary contract is let to the lowest and best bidder after competitive bidding or where such goods or services involved are reasonably available from two (2) or fewer commercial sources, provided such transactions comply with the public purchases laws.

(d) May be a contractor, subcontractor or vendor with any authority of the governmental entity of which he is a member, officer, employee or agent or have a material financial interest in a business which is a contractor, subcontractor or vendor with any authority of the governmental entity of which he is a member, officer, employee or agent: (i) where such goods or services involved are reasonably available from two (2) or fewer commercial sources, provided such transactions comply with the public purchases laws; or (ii) where the contractual relationship involves the further research, development, testing, promotion or merchandising of an intellectual property created by the public servant.

(e) May purchase securities issued by the governmental entity of which he is an officer or employee if such securities are offered to the general public and are purchased at the same price as such securities are offered to the general public.

(f) May have an interest less than a material financial interest in a business which is a contractor, subcontractor or vendor with any governmental entity.

(g) May contract with the Mississippi Veteran's Home Purchase Board, Mississippi Housing Finance Corporation, or any other state loan program, for the purpose of securing a loan; however, public servants shall not receive favored treatment.

(h) May be employed by or receive compensation from an authority of the governmental entity other than the authority of the governmental entity of which the public servant is an officer or employee.

(i) If a member of the Legislature or other public servant employed on less than a full-time basis, may represent a person or organization for compensation before an authority of the governmental entity other than an authority of the governmental entity of which he is an officer or employee.

(5) No person may intentionally use or disclose information gained in the course of or by reason of his official position or employment as a public servant in any way that could result in pecuniary benefit for himself, any relative, or any other person, if the information has not been communicated to the public or is not public information.

(6) Any contract made in violation of this section may be declared void by the governing body of the contracting or selling authority of the governmental subdivision or a court of competent jurisdiction and the contractor or subcontractor shall retain or receive only the reasonable value, with no increment for profit or commission, of the property or the services furnished prior to the date of receiving notice that the contract has been voided.

(7) Any person violating the provisions of this section shall be punished as provided for in Sections 25-4-109 and 25-4-111.

[Section 25-4-105, as amended by Laws, 1994, ch. 625, § 1, effective upon effectuation under Section 5 of the Voting Rights Act of 1965, as amended and extended, reads as follows:]

(1) No public servant shall use his official position to obtain pecuniary benefit for himself other than that compensation provided for by law, or to obtain pecuniary benefit for any relative or any business with which he is associated.

(2) No public servant shall be interested, directly or indirectly, during the term for which he shall have been chosen, or within one (1) year after the expiration of such term, in any contract with the state, or any district, county, city or town thereof, authorized by any law passed or order made by any board of which he may be or may have been a member.

(3) No public servant shall:

(a) Be a contractor, subcontractor or vendor with the governmental entity of which he is a member, other than in his contract of employment, or have a material financial interest in any business which is a contractor, subcontractor or vendor with the governmental entity of which he is a member.

(b) Be a purchaser, direct or indirect, at any sale made by him in his official capacity or by the governmental entity of which he is an officer or employee, except in respect of the sale of goods or services when provided as public utilities or offered to the general public on a uniform price schedule.

(c) Be a purchaser, direct or indirect, of any claim, certificate, warrant or other security issued by or to be paid out of the treasury of the governmental entity of which he is an officer or employee.

(d) Perform any service for any compensation during his term of office or employment by which he attempts to influence a decision of the authority of the governmental entity of which he is a member.

(e) Perform any service for any compensation for any person or business after termination of his office or employment in relation to any case, decision, proceeding or application with respect to which he was directly concerned or in which he personally participated during the period of his service or employment.

(4) Notwithstanding the provisions of subsection (3) of this section, a public servant or his relative:

(a) May be an officer or stockholder of banks or savings and loan associations or other such financial institutions bidding for bonds, notes or other evidences of debt or for the privilege of keeping as depositories the public funds of a governmental entity thereof or the editor or employee of any newspaper in which legal notices are required to be published in respect to the publication of said legal notices.

(b) May be a contractor or vendor with any authority of the governmental entity other than the author-

ity of the governmental entity of which he is an officer or employee or have a material financial interest in a business which is a contractor or vendor with any authority of the governmental entity other than the authority of the governmental entity of which he is an officer or employee where such contract is let to the lowest and best bidder after competitive bidding and three (3) or more legitimate bids are received or where the goods or services involved are reasonably available from two (2) or fewer commercial sources, provided such transactions comply with the public purchases laws.

(c) May be a subcontractor with any authority of the governmental entity other than the authority of the governmental entity of which he is an officer or employee or have a material financial interest in a business which is a subcontractor with any authority of the governmental entity other than the authority of the governmental entity of which he is an officer or employee where the primary contract is let to the lowest and best bidder after competitive bidding or where such goods or services involved are reasonably available from two (2) or fewer commercial sources, provided such transactions comply with the public purchases laws.

(d) May be a contractor, subcontractor or vendor with any authority of the governmental entity of which he is an officer or employee or have a material financial interest in a business which is a contractor, subcontractor or vendor with any authority of the governmental entity of which he is an officer or employee: (i) where such goods or services involved are reasonably available from two (2) or fewer commercial sources, provided such transactions comply with the public purchases laws; or (ii) where the contractual relationship involves the further research, development, testing, promotion or merchandising of an intellectual property created by the public servant.

(e) May purchase securities issued by the governmental entity of which he is an officer or employee if such securities are offered to the general public and are purchased at the same price as such securities are offered to the general public.

(f) May have an interest less than a material financial interest in a business which is a contractor, subcontractor or vendor with any governmental entity.

(g) May contract with the Mississippi Veteran's Home Purchase Board, Mississippi Housing Finance Corporation, or any other state loan program, for the purpose of securing a loan; however, public servants shall not receive favored treatment.

(h) May be employed by or receive compensation from an authority of the governmental entity other than the authority of the governmental entity of which the public servant is an officer or employee.

(i) If a member of the Legislature or other public servant employed on less than a full-time basis, may represent a person or organization for compensation before an authority of the governmental entity other than an authority of the governmental entity of which he is an officer or employee.

(5) No person may intentionally use or disclose information gained in the course of or by reason of his official position or employment as a public servant in any way that could result in pecuniary benefit for himself, any relative, or any other person, if the information has not been communicated to the public or is not public information.

(6) After July 1, 1997, no person may serve as a member of the Legislature while concurrently serving as an elected member of any political subdivision of the state. Any person having been elected to the Legislature must vacate the elected office being held in any other body. Upon being sworn in as a member of the Legislature, the office held by the person in any other body shall be vacated by operation of law. If a person serving in the Legislature does not vacate an office held in another body of a political subdivision of the state, he or she shall be removed from the original office after a hearing by a circuit court of competent jurisdiction.

(7) Except as otherwise provided in subsection (6) of this section, any contract made in violation of this section may be declared void by the governing body of the contracting or selling authority of the governmental subdivision or a court of competent jurisdiction and the contractor or subcontractor shall retain or receive only the reasonable value, with no increment for profit or commission, of the property or the services furnished prior to the date of receiving notice that the contract has been voided.

(8) Any person violating the provisions of this section shall be punished as provided for in Sections 25-4-109 and 25-4-111.

SOURCES: Laws, 1983, ch. 469, § 3; 1988, ch. 546, § 4, eff from and after December 9, 1988 (the date the United States Attorney General interposed no objection to the amendment); 1992, ch. 530, § 10 eff from and after July 1, 1992; 1994, ch. 586, § 1, eff from and after the date said ch. 586 is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended; 1994, ch. 625, § 1, eff from and after the date said ch. 625 is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended.

Editor's Note—

Laws, 1984, ch. 482, § 1, proposed to amend section 25-4-105, effective from and after the date Senate Concurrent Resolution No. 548 of the 1984 regular session of the Mississippi legislature (Chapter 655, Laws, 1984) was ratified by the electorate in November, 1984. Senate Concurrent Resolution No. 548 (Chapter 655, Laws, 1984) proposed to amend § 109 of the Mississippi Constitution, and to repeal §§ 107 and 210 of the Mississippi Constitution. The Senate Concurrent Resolution No. 548 was submitted to the electorate for ratification in November, 1984, but was rejected; thus the proposed amendment to § 25-4-105 never became effective.

Section 43-33-507 provides that all references to the Mississippi Housing Finance Corporation in any other law or regulation shall be deemed to refer to and apply to the Mississippi Home Corporation.

Laws, 1994, ch. 586, §§ 3 and 4, provide as follows:

"SECTION 3. The Attorney General of the State of Mississippi is hereby directed to submit this act, immediately upon approval by the Governor, or upon approval by the Legislature subsequent to a veto, to the Attorney General of the United States or to the United States District Court for the District of Columbia in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended.

"SECTION 4. This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

Laws, 1994, ch. 586, §§ 2 and 3, provide as follows:

"SECTION 2. The Attorney General of the State of Mississippi is directed to submit this act, immediately upon approval by the Governor, or upon approval by the Legislature subsequent to a veto, to the Attorney General of the United States or to the United States District Court for the District of Columbia in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended.

"SECTION 3. This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

Cross references—

Authority of the ethics commission to issue advisory opinions with regard to any standard of conduct set forth in this section, see § 25-4-17.

Public officials and their partners and associates prohibited from deriving profit from issuance of bonds or disposition of property under provisions governing construction and improvement of public facilities, see § 29-17-31.

Public officials not to derive income from issuance of bonds by Mississippi Home Corporation, see § 43-33-763.

Prohibition against public official deriving income from issuance of bonds under Mississippi Major Economic Impact Act, see § 57-75-25.

Application of this section to the Mississippi Gaming Commission, see § 75-76-9.

Research and Practice References—

1987 Mississippi Supreme Court Review, Professional responsibility, 57 Miss L J 433, August, 1987.

JUDICIAL DECISIONS

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I. IN GENERAL

1. In general; definitions; construction of terms

A public servant with purely ministerial duties and with no power to vote on matters considered by the governmental entity with which he or she is associated is not considered a "member" of that entity as the term is applied in §§ 25-4-101 et seq of the Ethics in Government laws. Moore ex rel. Chickasaw County v McCullough (1993, Miss) 633 So 2d 421.

Following characteristics serve as guidelines to distinguish between public office and public employment: (1) position should be prescribed by law; (2) position should have some specified term; (3) duties and powers of office should be defined or implied by law and should include authority to exercise some sovereign powers of state; (4) duties of office must concern public; and (5) holder of position should have power and authority to act in his or her own right. Op. of Miss. Ethics Comm. Op. No. 88-21-E.

Sister is not necessarily included in definition of "relative". Op. of Miss. Ethics Comm. Op. No. 90-098-E.

City and city school district are separate "authorities" under Code. Op. of Miss. Ethics Comm. Op. No. 92-025-E.

Chairmanship of state commission is "public office" where position is prescribed by law and has specified term, power and duties of position are defined by statute and include authority to exercise some sovereign power of state, and holder of position must take oath of office. Op. of Miss. Ethics Comm. Op. No. 92-068-E.

Whether legislator has "material financial interest" in a company which does business with state is dependent on totality of circumstances involved, for example value of ownership in corporation, percent of ownership, total income from corporation, posi-

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tion or positions held in it, legal responsibility, if any, to all stock holders and any conditions placed upon one's interest, divestiture of interest and to whom divestiture is made, compensation, abstention from voting on appropriation measures which fund any projects for which corporation may become subcontractor, conveyance of ownership into blind trust during his tenure in legislature and for one year afterwards, and related factors. Op. of Miss. Ethics Comm. Op. No. 92-086-E.

Commission has found that whenever Constitution Section 109 is violated, Code Section 25-4-105 subsection (2) is also violated. Op. of Miss. Ethics Comm. Op. No. 92-086-E.

Commission has applied the principle that any interest of one spouse accrues to the other spouse. Op. of Miss. Ethics Comm. Op. No. 91-111-E.

2-5. [Reserved for future use]

II. PARTICULAR PERSONS, MATTERS, AND CIRCUMSTANCES

6. State legislators

Insurance business, with which member of state legislature is ssociated, may not serve as agent for administrator of worker's compensation self-insurance pool for purpose of marketing worker's compensation self-insurance to county governments when county's authority to participate in pool was created by 1988 legislative act. Any agreement by county to anticipate in pool would constitute contract pursuant to section. Legislators/marketing insurance company agents would have interest in contracts as a result of their company consummating contracts and receiving benefits for such work. Op. of Miss. Ethics Comm. Op. No. 89-10-E.

Legislature may not lease real property to state agency; prohibition would not be removed by either use of irrevocable trust, transfer of property to corporation the sole stockholders of which are legislator's children or a trust, or transfer of propērty to a spouse who assumes indebtedness and transacts with government agent lessee. Op. of Miss. Ethics Comm. Op. No. 89-85-E.

Legislator may not contract with state commission to perform various duties related to fundraising and receive as payment percentage of funds raised as well as reimbursement for expenses incurred. Op. of Miss. Ethics Comm. Op. No. 90-118-E.

Law does not prohibit legislator/attorney from representing private clients in eminent domain matters brought about by Department of Economic Development, however legislator is cautioned that in serving as attorney for private clients there should be no use of his official position as set forth in subsection (1) of § 25-4-105. Op. of Miss. Ethics Comm. Op. No. 91-029-E.

Section prohibits legislator from selling land to state highway department, unless transfer is accomplished by eminent domain. Op. of Miss. Ethics Comm. Op. No. 91-033-E.

Section does not prohibit person from serving as chairman of large state commission within one year of being state legislator. Position of chairperson of state commission, in instance involved, is public office, therefore subject could accept appointment to such office without violating § 25-4-105 or Constitution Section 109. Op. of Miss. Ethics Comm. Op. No. 92-068-E.

It is conflict of interest for member of legislature to own more than 10 percent of a corporation which does subcontracting work on road construction projects funded, in part, by State Highway Department, because subcontract of legislator's firm would not exist without prime contract, thereby calling into play violation of Constitution Section 109. Op. of Miss. Ethics Comm. Op. No. 92-086-E.

As to whether it is conflict of interest for member of Legislature to own more than 10 percent of corporation which operates as subcontractor on sanitary water and sewer projects for counties, districts, cities, or towns within state, each separate subcontract would have to be analyzed to determine under what specific legal authority their prime contracts were let and how each would be funded. Should any of potential subcontract emanate from general legislation or from general legislative funding during legislator's term or one year thereafter, there would be conflict violation. Whether legislator votes or does not vote is not controlling; Section 109 of Constitution prohibits interest in certain contracts, and voting on matter does not bring section into application, nor does refraining from voting prevent its application. Op. of Miss. Ethics Comm. Op. No. 92-086-E.

Legislator's ownership over 30 percent of one corporation and 15 percent of another corporation, each of which were subjects of trust in purchase/redemption agreements, which did subcontracting work on road project funded in part by state Highway Department, one of which was valued at over $500,000, the other over $2,000,000, constituted prohibited interest in such companies. Fact that legislator's interest was placed in blind trust did not remove prohibited interest, it merely assigned management of it for period of time to a trustee. Op. of Miss. Ethics Comm. Op. No. 92-086-E.

Ethics violation arises where state legislator becomes employed by local school district within one year of expiration of his term. Op. of Miss. Ethics Comm. Op. No. 92-095-E.

Bank which employs legislator would be in violation if it purchased bonds or otherwise pursued business with state authorized by legislature during term of the legislator or for one year thereafter. Such business would not be a violation where it concerned bond issues authorized by legislature prior to the term of office of the legislator in question. Furthermore, violation might arise not only upon legislator's participation in legislative functions that involve matters singularly affecting the bank/employer, but may also arise upon participation in functions that involve competitor of the bank/employer, depending on facts involved. Op. of Miss. Ethics Comm. Op. No. 93-158-E.

Law prohibits legislator from being employed as agent to sell individual health and group insurance policies by insurance company which is under contract with state. As agent selling individual health and group insurance policies, receipt of resulting commissions constitutes material financial interest on part of legislator and since material financial interest in insurance company on part of legislator is prohibited when that company is a contractor, subcontractor, or vendor with Legislature, insurance company may not contract with Legislature. Op. of Miss. Ethics Comm. Op. No. 92-119-ER.

Attorney who is member of legislature may represent private clients before state agencies such as Mississippi Public Service Commission. However, should client be other than private client and take on form of governmental entity, determination of fact would have to be made in each case as to whether or not ethics laws would become applicable. Op. of Miss. Ethics Comm. Op. No. 92-183-E.

There is no prohibition against legislator being employed as attorney for and representing clients in gaming industry, although caution should be exercised so legislator does not use his official position for pecuniary benefit for himself or business with which he is associated; violation of statute may be avoided by complete recusal in matters which may benefit client. Op. of Miss. Ethics Comm. Op. No. 93-033-E.

Legislator may not become employed as consultant to home health agency, because of potential for agency to receive funds authorized by legislature. Op. of Miss. Ethics Comm. Op. No. 93-076-E.

7. —Dual office, employment or position

State senator could accept appointment as Executive Director of Mississippi Employment Security Commission without violating

§ 25-4-105 or Constitution § 109. Op. of Miss. Ethics Comm. Op. No. 88-21-E.

Legislator may simultaneously serve as adjunct professor at Mississippi university where such service would be without compensation or expense reimbursement. Op. of Miss. Ethics Comm. Op. No. 88-185-E.

Newly elected legislator may not have simultaneous employment with a state commission. Legislator would be in violation immediately upon being sworn into office where he is employed by state agency or commission. Commission recommends that legislator-elect resign from state employment prior to being sworn in to Legislature. Op. of Miss. Ethics Comm. Op. No. 91-140-E.

8. County supervisors

Section prohibits county from contracting with company that employs spouse of one of the county's supervisors. Spouse's salary constitutes prohibited interest on part of supervisor in any contract with spouse's employer. Op. of Miss. Ethics Comm. Op. No. 91-137-E.

Section prohibits county supervisor from becoming employed by county tourism board or commission at expiration of his term of office, where such tourism board or commission is formed as result of state, local and private legislation and implemented by board of supervisors. Op. of Miss. Ethics Comm. Op. No. 92-010-E.

Law prohibits corporation in which material financial interest exists on the part of a county supervisor, from contracting with regional mental health authority. Op. of Miss. Ethics Comm. Op. No. 92-031-E.

Ethics violation arises where county contracts with electric company owned by person whose father is member of board of supervisors who rents building to son. Op. of Miss. Ethics Comm. Op. No. 92-075-E.

Violation would occur should person be elected county supervisor and thereafter become affiliated with law firm which contracts with insurance company to represent certain county entities and public officials in same and other counties. Violation would not exist if law firm did not represent any of county personnel or entities of county or if supervisor chose not to affiliate with law firm. Neither recusal nor abstention prevents potential violation; while vote may be removed, prohibited interest in contract authorized by board lingers. Op. of Miss. Ethics Comm. Op. No. 93-216-E.

Ethics in Government law may be violated should supervisor and his immediate family serve as teachers in same county. If supervisor or "relative", meaning spouse, child, or parent, became teacher in city school system, no per se violation of ethics law would occur; city school system is separate authority from that of county. Should supervisor or "relative" become employed by county school system, where all of local funding portion or of salaries under teaching contract comes from mandatory local tax levies, again no violation would occur. Where portion of salary derived by public school teacher under teaching contract or that of a "relative" comes from discretionary local tax levies, such teaching contract would violate Section 109 of state Constitution and Code Section 24-4-105, subsection (2), while teacher is member of board of governing authority which makes such tax levies or within one year after term on governing board expires. Op. of Miss. Ethics Comm. Op. No. 92-103-E.

Law does not prohibit business owned by county supervisor from contracting with cities and towns within county, provided no county funds are used by entities in payment pursuant to a purchase; such purchase was not a consequence of town or city's compliance with requirement of county brought about by actions of board of which supervisor was a member, or within one year thereafter; and supervisor has not used official position for pecuniary benefit from self or his business in violation of Code. Ethics laws would not prohibit supervisor from doing business with other counties and cities within state or with the state. Op. of Miss. Ethics Comm. Op. No. 92-123-E.

Law prohibits county from contracting with bank as depository when one of supervisors received $6,600 per year as advisory member of bank. Op. of Miss. Ethics Comm. Op. No. 92-146-E.

Member of county board of supervisors simultaneously employed by county hospital of same county would have prohibited interest in contract authorized by the board of which he is a member. Provisions would be violated should described circumstances exist subsequent to start of new budget cycle, whereas prior to such start of budget cycle no violation would occur since employment in question had been authorized prior to the supervisor's taking office. Same principles would apply to any new contracts authorized between hospital and board of supervisors or as to any such items requiring action on part of board, such as hospital's budget, contracts which include payment to hospital for services or of interest to all employees of hospital, as their sustenance is in part derived from such contract. Only complete recusal on part of supervisor in all board deliberations and voting as to matters involving hospital, including appointment of its trustees, will avoid violation as to code subsection (1), but recusal removes only the vote, and not the prohibited interest subject to constitutional Section 109 and code § 25-4-105(2). (Commission also recommended that office of Attorney General be contacted as to applicability of Constitutional separation of powers doctrine as Commission lacks authority to interpret that provision.) Op. of Miss. Ethics Comm. Op. No. 92-231-E.

9. Mayor, alderman, councilperson

Alderman may not cast vote in such manner as to result in benefit to a business with which he is associated, thus motion before board of aldermen resulting in conditional use permit being granted to oil company employing an alderman would constitute conflict. Op. of Miss. Ethics Comm. Op. No. 90-066-E.

Alderman may not, during ice storm subsequently proclaimed to be state-wide emergency, contract on behalf of city with private business owned and operated by employee of city to remove trees, tree limbs, etc., posing danger to public and interruption of utility service, notwithstanding emergency status. Op. of Miss. Ethics Comm. Op. No. 89-78-E.

City may not purchase goods or services from county co-op when chairman of board of co-op is city employee and bookkeeper of co-op is city alderman. Op. of Miss. Ethics Comm. Op. No. 89-159-E.

Alderman may not sell goods to contractor who is to be paid from proceeds of a community development block grant awarded to the city in which he is alderman; any agreement entered into city which predicates receipt of block grant constitutes contract pursuant to section, and alderman would be interested in contract, for without it there would be no purchase of building supplies. Op. of Miss. Ethics Comm. Op. No. 91-035-E.

It would be violation for alderman or councilman to become general manager or employee of non-profit service company owned by 2 other non-profit corporations which contract with their city. In addition, alderman or councilman would be subcontractor with governmental entity of which he or she is a member and thus have "material financial interest" in any business which is a contractor, subcontractor, or vendor with the governmental entity of which he or she is member, in violation of this section. Op. of Miss. Ethics Comm. Op. No. 91-062-E.

Violation exists where alderman owns approximately four tenths of one percent of stock of a corporation, such stock valued at $20,000, where corporation is expected to contract with city and to receive Community Development Block Grant initiated by city. Prohibited interest on part of alderman can be removed only by his divesting himself of investment. Recusal, "no" vote or abstention from voting does not remove prohibited interest. Op. of Miss. Ethics Comm. Op. No. 92-040-E.

Law prohibits attorney from becoming city attorney of a town whose mayor is attorney's secretary. Op. of Miss. Ethics Comm. Op. No. 93-130-E.

Ethics laws prohibit mayor and alderman from serving on city's

chamber of commerce. Discretion of city governing body and its action in setting aside, appropriating, or expending funds to chamber so that chamber can provide its services to city constitutes at least an implied contract between two entities. Such contract would be illegal, with affected board member and board as a whole being liable. Mayor and alderman may, however, be members of chamber, as opposed to members of its board of directors. Op. of Miss. Ethics Comm. Op. No. 93-219-E.

Law does not prohibit city employees such as city clerk from serving on city's chamber of commerce. Not being members of city's governing board, no conflict would arise. However, should they become compensated members of chamber's board of directors in future, such should be brought to attention of Commission as it could constitute violation of ethics law. Op. of Miss. Ethics Comm. Op. No. 93-219-E.

City councilman is in violation of ethics laws if he does business with gaming operation which is lessee of city and also votes on matters coming before council which concern gaming operation. Op. of Miss. Ethics Comm. Op. No. 92-186-E.

It is not improper for alderman to participate in board deliberations and votes concerning dockside gambling when casino corporation is negotiating with both city and yacht club of which alderman is a member and in which alderman owns form of indebtedness, where alderman and his spouse purchased, in 1982, a $1,000 construction bearer bond of yacht club, which approximately in November, 1992 was transferred to a person not a "relative" and also in November, 1992 alderman's membership in yacht club was removed, and alderman did not have boat at yacht club nor current affiliation with it. Op. of Miss. Ethics Comm. Op. No. 92-206-E.

Ethics laws do not prohibit city councilman from simultaneously being employee of state commission. Op. of Miss. Ethics Comm. Op. No. 93-022-E.

Where citizens seeking to qualify for office of town alderman also is plaintiff in federal lawsuit against town, any settlement of suit may be effectuated and any agreed-to liability against city may be paid, prior to alderman candidate's taking office; however should alderman candidate take office first, then any settlement would in effect be precluded; settlement would be contract and new alderman would have an interest in it which would be authorized by the board of which he is a member, in violation of code and state constitution. However, legal fees may be paid to city attorney with respect to action since attorney's contract to represent city in action was entered into prior to alderman candidate's taking office. This holds true whether payment of fees is effected before or after alderman takes office. Finally, should court determine liability against city or order city to pay plaintiff's legal costs, city may pay amounts regardless of whether or not alderman takes office. Op. of Miss. Ethics Comm. Op. No. 93-035-E.

There would be no violation of subsection (1) of the section were city councilman to vote on zoning matter concerning land adjacent to him which vote would not result in pecuniary benefit to him. Op. of Miss. Ethics Comm. Op. No. 93-066-E.

10. —Conflict involving family member

Section does not prohibit emancipated son of alderman from becoming employee of same city. Particular factors indicating emancipation are key determinants in decision. However, alderman/father should not participate in any board matter concerning son. Furthermore, Commission expressed concern that son's emancipation could be direct result of his obtaining job with city, financially enabling him to live apart from parents; should that be true, alderman/father would have interest in son's employment contract, implicating prohibitions of section. Op. of Miss. Ethics Comm. Op. No. 90-065-E.

Section prohibits town from contracting with local bank where spouse of alderman is assistant vice president of bank. Under such facts, alderman would have an interest in any contract authorized by his board, as without order of the board the city would be unable to proceed with the particular contractual arrangement described. Op. of Miss. Ethics Comm. Op. No. 91-054-E.

Ethics violation exists where person is elected alderman whose spouse is sergeant on city's police department. Once city's annual budget is adopted or like official action takes place which affects spouse of alderman, a violation of Constitutional Section 109 and Code Section 25-4-105(2) will occur. Op. of Miss. Ethics Comm. Op. No. 92-111-E.

Violation of ethics laws would occur should spouse of councilperson serve as public defender following spouse's appointment by mayor in mayor-council form of city government. Op. of Miss. Ethics Comm. Op. No. 93-133-E.

11. Public agency or commission

State agency's having its vehicles repaired at dealership of one of its commissioners would be violation of section. Commissioner as owner of dealership has material financial interest in company which constitutes interest in any contract between his company and board of which he is member. Also, if commissioner participated in any positive manner in any board action allowing commission to do business with his company, such participation would constitute violation of section. Op. of Miss. Ethics Comm. Op. No. 89-44-E.

Executive director of state entity may simultaneously own business which sells public information produced by state where such venture will be on subject's personal time, no public facility or equipment or supplies would be used, and information is "public" in nature; advertising via television, radio, newspaper, or direct mail which reaches public employees or officials would not cause confrontation with ethics laws where any contract involved would not be contract with government entity but with private entity. However, to avoid appearance of impropriety, subject's public position and/or employer should not appear in conjunction with private business in any way and subject is reminded that he cannot use public employees or resources on behalf of private company. Op. of Miss. Ethics Comm. Op. No. 89-48-E.

Member of state commission may not participate through his corporation in sponsorship of improvements on state property in return for exclusive signage (publicity); thus where stadium is considering refurbishing existing scoreboard and adding color matrix system and would solicit corporate sponsorship to offset cost, each sponsor receiving privilege panel which would bear its name and logo, provision would be violated if local financial institution, in which commission member was officer, became one of such sponsors. Recusal by board member/corporate officer would be effective bar to application of subsection (1) but not as to subsections (2) or (3)(a) or § 109 of Constitution. Op. of Miss. Ethics Comm. Op. No. 89-67-E.

Insufficient information is provided to determine whether conflict of interest violation would exist where corporation, of which commission member is officer, would agree to place mobile automated machine on property of public stadium during football games. Op. of Miss. Ethics Comm. Op. No. 89-67-E.

Expanded board of newly renamed and modified statutory "governmental entity" may not offer executive position of employment to former board member less than one year after that member's resignation. Where prohibition is from accepting executive position with board "of which [person] was a member", governmental entity in question was same one of which subject was previously member, merely expanded and continued in slightly different form with four additional members. Op. of Miss. Ethics Comm. Op. No. 89-141-E.

Where corporation's president is member of board of directors of a state board, corporation is prohibited from selling materials to that state board; however, it is not prohibited from selling materials to other department of the state. Caution should be exercised by the state board member so that none of his actions as board member serves as a predicate to or trigger of purchases by other state agencies from board member's private corporation. Op. of Miss. Ethics Comm. Op. No. 90-092-E.

State public servant is prohibited from serving as administrator of a grant received by a county from state department of which public servant is member. Violation is present and continues even though contract predates employment by the state of the person involved. Op. of Miss. Ethics Comm. Op. No. 90-117-E.

Doctor who is National Health Service obligee employed by the Department of State of Mississippi who provides hospital care after normal working hours and on weekends and is reimbursed by Medicaid for such services for patients who are covered, and is willing to perform same services after hours and on weekends for non-Medicaid eligible patients, to be compensated by state, where there be no other doctors in area readily available to provide such service to such patients, may continue in such contractual arrangement, as long as his services are reasonably available from 2 or fewer commercial sources and provided that such transactions otherwise comply with public purchase laws. However caution is urged, for should doctor's after hours contractual obligations actually occur during or carry over into time in which he performs regular responsibilities, such would constitute prohibited use of his official position to obtain pecuniary benefit other than that compensation which is provided by law. Also, doctor is prohibited from recommending the services he would perform after hours to patients while on public duty and subsequently performing such service as private doctor. Op. of Miss. Ethics Comm. Op. No. 90-126-E.

Law does not per se prohibit company owned by member of a state commission from becoming contractor, subcontractor, or vendor to private corporation which is licensed to commission, because license is not a contract; however, commission member must avoid using his position for pecuniary benefit and should recuse self from any commission action directly affecting any private corporation with which his company has been doing or reasonably expects to do business as contractor, subcontractor, or vendor with any entity licensed by commission. Commission member is also precluded from using or disclosing any information he obtains as result of his position to benefit himself or anyone else, if information has not been communicated to public or is not public information. In all Commission has grave concern as to appearance of impropriety that would arise from described arrangement. Op. of Miss. Ethics Comm. Op. No. 93-183-E.

Where city's Convention Commission acquires land from partnership in which one of its former members has financial interest, violation occurs; although Commission may discuss and decide upon one or more sites in order of preference based on demographic merits and economic factors, nevertheless, if Commission's decision is that its first preference is property in which former member holds interest, Commission may not decide that if property is still available at end of one year from former member's resignation Commission would then seek to acquire property. Contract in such case would be authorized during one year period, and simply delaying its execution does not preclude application of prohibition. Furthermore, violation would occur even if partnership was willing to donate land, if partnership also owned land surrounding the land which would be donated, as surrounding land would very likely increase in value and thereby benefit former member who holds interest in it. Op. of Miss. Ethics Comm. Op. No. 92-166-E.

City's convention commission and city itself are barred from purchasing or receiving land as donation from partnership, a substantial financial and operating interest of which is possessed by former chairperson of convention commission, within one year after his resignation. Op. of Miss. Ethics Comm. Op. No. 92-149-E.

Law does not prohibit company from contracting with state commission where spouse of part owner of company is also employee of commission, but who exercises no control over contracts. Application of ethics code provisions rest upon determination of fact in each case; generally, as long as employee exercises no control over contracts, does not approve contracts, does not attempt to influence such decisions, and does not intentionally use or disclose non-public information as regards spouse's business, code sections would not be violated. Op. of Miss. Ethics Comm. Op. No. 92-182-E.

Where executive employee of state regulatory commission sought to resign state employment and become employed either by corporation or by one of its subsidiaries, one of which possessed license issued by commission and another which had no contact with employees of commission but expected to be considered for future license, no violation would occur simply by subject's becoming employed by one of the corporations; same would be the same where subject accepted employment with another subsidiary which conducts gaming activities within the state, or with another entity which plans to conduct gaming activities within the state but which has not yet been issued a license and which had no contact with any employee of commission, as long as former employee does not divulge confidential information. Op. of Miss. Ethics Comm. Op. No. 92-237-E.

Ethics laws do not prohibit city councilman from simultaneously being employee of state commission. Op. of Miss. Ethics Comm. Op. No. 93-022-E.

Law bars member of official state board from being compensated by company which enters into contract with board. Consequently member of board who has promoted eggs and other farm products as home economist and private contractor for number of years, may not engage in radio, television, or other media promotions where board of which she is member has entered into a contractual relationship with private company to produce and broadcast advertisement promoting eggs, where company would like to utilize aforementioned member in such advertisements, for compensation, and where agreement leads production questions including casting to discretion of the advertising company. Op. of Miss. Ethics Comm. Op. No. 93-104-E.

12. Public authority

Senior vice president of local bank depository of city housing authority may not also serve as commissioner/board member of housing authority, as he would hold prohibited interest in contracts for depositories. Op. of Miss. Ethics Comm. Op. No. 89-26-E.

Appointed member of city/county developmental authority may not become employed as auditor of same authority. Op. of Miss. Ethics Comm. Op. No. 90-021-E.

It would be violation for Board of Commissioners of a transportation authority to compensate its president for serving temporarily as its executive director as well. It matters not whether president resigned to become executive director or whether he provided temporary services in any capacity for the authority simultaneous with his service as board member, since for president to temporarily assume duties as executive director would require formal action on part of board, similarly compensation to board president would also require formal action on part of board; without order of board, employment or compensation would not be authorized; any such authorization brings in prohibitions of this section and Constitution Section 109. Op. of Miss. Ethics Comm. Op. No. 91-075-E.

Bank would violate law were it to bid on bonds issued for county's Economic Development District, where bank officer is simultaneously trustee for District. Additionally, any participation by trustee/bank officer in board deliberations or vote as concerns matter which would result in "pecuniary benefit" to trustee is prohibited; to avoid violation of provision, trustee/bank officer should totally recuse self, which would be effective as to § 25-4-105 subsection (1) but not as to Constitution Section 109 or Code subsection (2). Op. of Miss. Ethics Comm. Op. No. 91-083-E.

No violation of ethics laws occurs when Port Authority commissioner owns stock in company which is neither contractor nor subcontractor of Port Authority or otherwise contracts with Authority, despite fact that another owner of stock of company owns second corporation which contracts with Port Authority. Op. of Miss. Ethics Comm. Op. No. 93-118-E.

Commissioner of Port Authority may not own 200 shares of

casino stock valued at approximately $1,000 where casino is under lease with Authority, and Authority participates on percentage basis in revenues generated by casino, and frequently deals with problems arising concerning lease. Stock owned by commissioner constitutes interest in lease contract authorized by his Authority, thus is prohibited. Op. of Miss. Ethics Comm. Op. No. 93-118-E.

Public purchase and trading of casino stock during 1993 by commissioner of Port Authority resulting in profits of over $28,000, current holdings of 500 shares with unrealized gain of over $8,000, and ownership of 600 shares in IRA of dependent relative with unrealized gain of over $12,000, each constitute violation of Ethics law. Op. of Miss. Ethics Comm. Op. No. 93-118-E.

Constitutional Section 109 and Code Section 25-4-105 subsections (2) and (3)(a) would not prohibit casino from contracting with bank depository where vice president and member of board of directors of bank depository served as commissioner of Port Authority. Authority's lease with casino does not in and of itself create interest in lease on part of commissioner, merely because his bank holds contract with casino, where there is no evidence that bank would not contract with casino if casino had not held lease with commission. Also, commissioner does not have material financial interest in casino as he does not receive any income or benefit from it. Nevertheless, commissioner-banker should not vote on matters affecting casino since his bank could be indirectly affected which in turn could cause commissioner to violate subsection (1), thus commissioner ought to recuse self from casino matters coming before Authority. Op. of Miss. Ethics Comm. Op. No. 93-118-E.

Ethics laws prohibit Industrial Development Authority from contracting with bank to sell it land when one of IDA commissoners is employed by bank. While recusal on part of commissioner in deliberations and voting on board of which he is member would remove potential violation of subsection (1), it would not remove prohibited interest in violation of subsection (2) and Constitution Section 109. Op. of Miss. Ethics Comm. Op. No. 93-173-E.

Law prohibits bank from purchasing bonds of public regional airport authority, where such purchase is secondary purchase following an original issuance to another institution, where member of board of airport authority has material financial interest in bank. Without order by airport authority board, airport would be unable to proceed with particular contractual arrangement described. Op. of Miss. Ethics Comm. Op. No. 92-229-E.

13. School, board of education

Member of board of trustees of consolidated school district had material financial interest in auto parts company which employed him such as to constitute an interest in any contract between the company and the board of which he is a member (assuming that he earns in excess of $100,000 annually, since it was not stated); therefore any sales of goods or services by subject's employer to his school district would cause subject to violate Constitution § 109 and Code § 25-4-105. Op. of Miss. Ethics Comm. Op. No. 88-156-E.

Where daughter or daughter-in-law of county school board member sought to be employed as teacher's aide or substitute teacher by same county, if she was financially dependent upon school board member then such employment would constitute violation of section, as school board member would have an interest in her employment, however if she was free from member's control and support then provisions would not be violated. Op. of Miss. Ethics Comm. Op. No. 88-184-E.

School board member may not be employed by major supplier of school district. Op. of Miss. Ethics Comm. Op. No. 89-34-E.

It would be conflict of interest for school board member to simultaneously be major stockholder in bank depository of same school district; where bank depository was authorized prior to board member's bank's purchase of second bank involved, violation occurs but it is problematical whether court would order any penalty. However, penalties should be in order should school board again select purchased bank as depository at end of current deposit contract year. Op. of Miss. Ethics Comm. Op. No. 90-028-E.

Candidate if elected to county school board may possess leasehold interest in Sixteenth Section land negotiated before becoming candidate, inasmuch as all transactions for leasehold interest occurred prior to candidacy and required no action on part of county school board other than acceptance of lease payment which is ministerial in nature. However, should any intervening events such as new statutory requirements or sale of leasehold interest occur requiring consideration and/or action by county school board, then section would become pertinent, and recusal by candidate would not prevent violation of provision. Furthermore candidate is cautioned not to participate in any board action affecting leasehold interest, in order to avoid application of section. However, recusal would be effective in this regard. Op. of Miss. Ethics Comm. Op. No. 89-63-E.

No violation exists where sister of prospective appointee as member of school board has been principal and long-time employee of one of schools served by such board. Sister is not included in definition of "relative" in § 25-4-103(p). Op. of Miss. Ethics Comm. Op. No. 90-098-E.

Law does not prohibit employee of one school district from becoming member of board of trustees of another adjoining school district provided employee recuses self from any deliberations or actions in the first school district that concern second school district. Op. of Miss. Ethics Comm. Op. No. 91-001-E.

Ethics violation arises where state legislator becomes employed by local school district within one year of expiration of his term. Op. of Miss. Ethics Comm. Op. No. 92-095-E.

Superintendent of school district may not accept honorarium from staff development session for an agency when his salary and expenses are paid by his own district. Op. of Miss. Ethics Comm. Op. No. 93-132-E.

Ethics in Government law may be violated should supervisor and his immediate family serve as teachers in same county. If supervisor or "relative", meaning spouse, child, or parent, became teacher in city school system, no per se violation of ethics law would occur; city school system is separate authority from that of county. Should supervisor or "relative" become employed by county school system, where all of local funding portion or of salaries under teaching contract comes from mandatory local tax levies, again no violation would occur. Where portion of salary derived by public school teacher under teaching contract or that of a "relative" comes from discretionary local tax levies, such teaching contract would violate Section 109 of state Constitution and Code Section 24-4-105, subsection (2), while teacher is member of board of governing authority which makes such tax levies or within one year after term on governing board expires. Op. of Miss. Ethics Comm. Op. No. 92-103-E.

Violation arises where spouse of cafeteria manager of county school district is elected member of same district's school board. Violation would occur when board rehires its employees each year. Op. of Miss. Ethics Comm. Op. No. 92-165-E.

Ethics laws prohibit spouse of member of county board of education from being employed as school bus driver for county. Op. of Miss. Ethics Comm. Op. No. 89-115-E.

It is violation for school board member's spouse to be secretary with school county food service, despite that a salary is paid entirely from federal funds. Conflict can be resolved only by one or other spouse resigning from position. Furthermore, spouse cannot be paid as long as member remains on school board and for one year thereafter. Op. of Miss. Ethics Comm. Op. No. 88-55-E.

Ethics in Government laws prohibit county school board member from contracting with corporation as to sale of sixteenth section timber when trustee is employed by corporation. Subsection (3) paragraph (a) would be violated as such trustee/employee would have a material financial interest in a contract with governmental authority of which he is member. However, trustee whose spouse was corporate employee would not violate same provision. Op. of Miss. Ethics Comm. Op. No. 92-173-E.

Ethics in Government laws prohibit county school board mem-

ber from contracting with corporation as to sale of sixteenth section timber when trustee is employed by corporation. Subsection (3) paragraph (a) would be violated as such trustee/employee would have a material financial interest in a contract with governmental authority of which he is member. However, trustee whose spouse was corporate employee would not violate same provision. Op. of Miss. Ethics Comm. Op. No. 92-173-E.

Both county school board trustee who is employed by corporation and trustee whose spouse is employed by corporation possess "interest, direct or indirect" in contract authorized by school board with corporation as to sale of sixteenth section timber such as to call into application § 24-4-105 subsection (2). Op. of Miss. Ethics Comm. Op. No. 92—173-E.

Violation arises upon continued employment of vocational counselor of county school district after he is sworn as elected member of county school board. Counselor should either resign elected position or resign counselor position. Op. of Miss. Ethics Comm. Op. No. 92-200-E.

14. Hospital, health care

No violation exists where members of community hospital board of trustees and its administrative employees serve as members, board members or officers of non-profit corporation organized by hospital to provide patient health care services. As long as trustees and employees are compensated by hospital according to state law rather than non-profit corporation, they would have no prohibited interest in any contracts between hospital and non-private corporation nor any material financial interest in such non-profit corporation, and their interest in corporation would be to represent hospital's interest and concerns. However, once partnership is formed, contracts between hospital and partnership would effectively preclude any hospital trustee, employee or agent from becoming investor, whether directly or indirectly, in partnership. Also, public servants of hospital would not be allowed to become employees of partnership or of any facility owned by partnership. Moreover, any doctor who is classified as independent contractor with hospital should analyze his or her contract prior to becoming associated with partnership to ensure that he or she is not public servant of hospital; nature and scope of each contract would determine whether given doctor is independent contractor or public servant. Op. of Miss. Ethics Comm. Op. No. 92-048-E.

Ethics Laws prohibit nurse employed as state division director of program from becoming employed during off hours by private nursing agency which has provider agreement with division, and which also operates in part under plans of care which are improved by same nurse. To avoid violation, it would be necessary for nurse to completely remove herself from any official functions dealing with private employer; however, even such measure would be ineffective as to application of subsection (3)(a). Op. of Miss. Ethics Comm. Op. No. 93-161-E.

It would be dificult for nurse employed as state division director of program from becoming employed by private medical doctor who is not under provider agreement or plan of care but who does receive Medicaid reimbursement, since, although private off-hours employment with private agency which is neither under provider agreement, plan of care for children, or supervision or inspection of division nor receives Medicaid reimbursement, would not in and of itself violate ethics laws, such employment should be subject to periodic review so that due to any intervening facts one or more code sections are not violated. Op. of Miss. Ethics Comm. Op. No. 93-161-E.

Member of county board of supervisors simultaneously employed by county hospital of same county would have prohibited interest in contract authorized by the board of which he is a member. Provisions would be violated should described circumstances exist subsequent to start of new budget cycle, whereas prior to such start of budget cycle no violation would occur since employment in question had been authorized prior to the supervisor's taking office. Same principles would apply to any new contracts authorized between hospital and board of supervisors or as to any such items requiring action on part of board, such as hospital's budget, contracts which include payment to hospital for services or of interest to all employees of hospital, as their sustenance is in part derived from such contract. Only complete recusal on part of supervisor in all board deliberations and voting as to matters involving hospital, including appointment of its trustees, will avoid violation as to code subsection (1), but recusal removes only the vote, and not the prohibited interest subject to constitutional Section 109 and code § 25-4-105(2). (Commission also recommended that office of Attorney General be contacted as to applicability of Constitutional separation of powers doctrine as Commission lacks authority to interpret that provision.) Op. of Miss. Ethics Comm. Op. No. 92-231-E.

Legislator may not become employed as consultant to home health agency, because of potential for agency to receive funds authorized by legislature. Op. of Miss. Ethics Comm. Op. No. 93-076-E.

15. Judge, judicial employee

Conflict of interest laws do not permit Chancellor to lease private law office property to county for use of court administrator whose existence was created by an order of the Chancellor. Op. of Miss. Ethics Comm. Op. No. 89-98-E.

Chancellor may sell private law office real property to third party and thereafter lease same or part of same premises for his own use and use of court administrator whose existence was created by an order of the Chancellor, such lease to be at county expense; however such arrangement is permissible only if sale to disinterested third-party is absolute and final with no future options and not contingent upon any future action of Chancellor, and the space leased from third party would be that for use by the Chancellor. Chancellor must not be placed into any position of receiving pecuniary benefit prohibited by section. Op. of Miss. Ethics Comm. Op. No. 89-98-E.

Ethics in Government laws prohibit newly elected county supervisor from having spouse employed as deputy justice court clerk. Violations would occur once board adopts annual budget after newly elected supervisor takes office. Underlying rationale is principle that any interest of one spouse accrues to other spouse. Op. of Miss. Ethics Comm. Op. No. 91-111-E.

Service of writs or summons by deputy circuit clerk during her regular working hours would constitute use of her official position for pecuniary benefit in violation of code. To serve writs or process without violating subsection (1), such activity must be devoid of such factors as use of official position, county facilities and county telephones, etc, during regular working hours. Op. of Miss. Ethics Comm. Op. No. 93-142-E.

16. Law enforcement

Ethics laws would be violated should sheriff employ his spouse. Sheriff's office is not a separate authority, but part of county government. Board of supervisors must authorize sheriff's expenditures, including the hiring of employees, predicated on recommendation of sheriff. Such recommendation or hiring by sheriff constitute use of his official position to obtain pecuniary benefit in violation of code. Op. of Miss. Ethics Comm. Op. No. 92-085-E.

Ethics violation exists where person is elected alderman whose spouse is sergeant on city's police department. Once city's annual budget is adopted or like official action takes place which affects spouse of alderman, a violation of Constitutional Section 109 and Code Section 25-4-105(2) will occur. Op. of Miss. Ethics Comm. Op. No. 92-111-E.

Since county school system, pursuant to § 25-4-103(a), is separate authority from that of county proper, which includes board of supervisors, sheriff's office, and other divisions, county sheriff and employee of county Law Enforcement Agency may own and operate business, such as private security business, which contracts with county school system, so long as other provisions are not violated. However, Commission points out strong potential for

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abuse, concerning, for instance, use of confidential information and licensing of private security company employees to carry weapons. Another concern is almost certain appearance of impropriety that would arise. Op. of Miss. Ethics Comm. Op. No. 93-225-E.

17. —District attorney

Where district attorney is currently using set of law books owned by legal assistant employed by him, legal assistant may not sell set to district attorney, even though district attorney would then purchase upgrades from independent vendor, since legal assistant is public servant and as such is prohibited from being contractor or vendor with governmental entity of which he is member. Op. of Miss. Ethics Comm. Op. No. 93-093-E.

Spouse of district attorney may not remain his secretary following their marriage when her initial employment occurred before marriage, inasmuch as her continued employment as well as her supervision would be at discretion of district attorney, and her salary would depend on district attorney's written requisition to state. Op. of Miss. Ethics Comm. Op. No. 93-093-E.

As to whether district attorney may be paid for monthly rental of personally owned property, including office space, from funds appropriated by state for office expense allowance, any such rental would constitute prohibited contract. Such would also be case if such services were purchased from a spouse. However, determination of fact would be necessary if rental was from parent or child. Op. of Miss. Ethics Comm. Op. No. 93-093-E.

Rent may not be paid to compulsory school attendance officers for use of their home as office, from state funds appropriated for compulsory school attendance officers office expense allowance, as such would violate subsection (3) paragraph (a) of section. Determination of fact would be required to decide whether or not rental would involve use of official position for pecuniary benefit in violation of subsection (1). Op. of Miss. Ethics Comm. Op. No. 93-093-E.

18. Attorney

Where legislator/attorney who practices in same city where his father is councilman and his law associate is city attorney, legislator/attorney may perform those legal services contracted to him by his law associate which would not otherwise have been prohibited had legislator/attorney contracted from them directly. Op. of Miss. Ethics Comm. Op. No. 90-052-E.

As to whether conflict provisions affect legislator/attorney who practices in same city where his father is councilman and his law associate is city attorney, and legislator/attorney acts as assistant city attorney or as city prosecutor or city judge, since state of emancipation exists between father and son with no financial dependency or involvement, father would not be legally "interested" in any contract between city and his son, therefor conflict provisions are not applicable. However to avoid "use of office" violation, father/councilman should not participate in any city council proceedings which may concern or affect son, including vote or negotiation concerning him. Thus, as long as separation of powers problem does not exist, father/councilman does not "use his official position" and son is not prohibited from serving the city in categories indicated. Op. of Miss. Ethics Comm. Op. No. 90-052-E.

Law does not prohibit legislator/attorney from representing private clients in eminent domain matters brought about by Department of Economic Development, however legislator is cautioned that in serving as attorney for private clients there should be no use of his official position as set forth in subsection (1) of § 25-4-105. Op. of Miss. Ethics Comm. Op. No. 91-029-E.

Conflict of interest law prohibits law firm, of which member of state board is member, from representing state agency where such representation and contract require approval by state board. Moreover, board member's recusal as to voting and deliberations would avoid violation of subsection (1) only, not of subsection (2) or of Constitution Section 109. Op. of Miss. Ethics Comm. Op. No. 91-132-E.

Ethics in government laws are not violated should spouse of a city attorney/ex-legislator become employed by same city's school district. City and city school district are separate "authorities" under subsection (a) of § 25-4-103 and spouse may be employed by a separate authority. Op. of Miss. Ethics Comm. Op. No. 92-025-E.

Law prohibits attorney from becoming city attorney of a town whose mayor is attorney's secretary. Op. of Miss. Ethics Comm. Op. No. 93-130-E.

Violation of ethics laws would occur should spouse of councilperson serve as public defender following spouse's appointment by mayor in mayor-council form of city government. Op. of Miss. Ethics Comm. Op. No. 93-133-E.

Violation would occur should person be elected county supervisor and thereafter become affiliated with law firm which contracts with insurance company to represent certain county entities and public officials in same and other counties. Violation would not exist if law firm did not represent any of county personnel or entities of county or if supervisor chose not to affiliate with law firm. Neither recusal nor abstention prevents potential violation; while vote may be removed, prohibited interest in contract authorized by board lingers. Op. of Miss. Ethics Comm. Op. No. 93-216-E.

Attorney who is member of legislature may represent private clients before state agencies such as Mississippi Public Service Commission. However, should client be other than private client and take on form of governmental entity, determination of fact would have to be made in each case as to whether or not ethics laws would become applicable. Op. of Miss. Ethics Comm. Op. No. 92-183-E.

19. Other

The assignment of a lease-purchase contract with a county to a business owned by the chancery clerk of the county board of supervisors did not violate § 25-4-105(3)(a), which prohibits a public servant from being a contractor, subcontractor or vendor with the governmental entity of which he or she is a member, since an assignment of a contract to a public servant's business does not violate the language of the statute, and the chancery clerk was not a "member" of a governmental entity but was merely an employee. Moore ex rel. Chickasaw County v McCullough (1993, Miss) 633 So 2d 421.

Law prohibits assistant data clerk and secretary for county tax assessor from accepting fee from citizen to furnish citizen with information from property record cards and tax receipts, if public servant conducted such work during regular working hours, unless such duty was part of her official duties, and if it were considered her official duty, any receipt of fee would constitute violation of subsection (1). Section would also be violated if any of records or facilities of tax assessor which were not available to and freely used by public after hours were used by public servant after hours in fulfilling desired request for fee. Op. of Miss. Ethics Comm. Op. No. 93-175-E.

Where manager is hired by state to help manage two federal grants, and manager's two children seek to become employed by one of the two grants, hiring and continued employment of children would constitute use of manager's official position for pecuniary benefit for a relative in violation of code subsection (1). Additional possible violations under subsection (3)(d) could exist but must be found through determination of facts. Commission adds that situation raises suspicion among public and reflects unfavorably upon state. In relation to 93-206-E(n 19) add: "As to money paid to employee's children, department should be guided by § 25-4-113." Op. of Miss. Ethics Comm. Op. No. 93-206-E.

Ethics laws prohibit volunteer fire department from purchasing gasoline from service station owned by son of county supervisor and from which supervisor receives monthly income. Op. of Miss. Ethics Comm. Op. No. 93-208-E.

Law is not violated when County Medical Examiner Investigator has Deputy who is simultaneously a director of local funeral home. Op. of Miss. Ethics Comm. Op. No. 92-125-E.

Ethics law is not violated should designated pathologist be named State Medical Examiner and serve in that capacity, without compensation, while continuing to conduct autopsies as pathologist. However, commission voices grave concern as to practicality and propriety of having pathologist conducting large percentage of state's autopsies also responsible for rules and regulations under which he and his professional colleagues perform public duties, and path he would be forced to follow in order not to fall into violation of using official position for pecuniary benefit may be so narrow as to limit effectiveness as State Medical Examiner. Op. of Miss. Ethics Comm. Op. No. 92-132-E.

Law prohibits employee of county tax assessor's office from writing bail bonds returnable to county; any bond written by county employee or his bail bonding company and accepted by county court and returnable to county would constitute prohibited contract between the county and employee and his company. It is of no consequence whether the person placed under bond may be charged with felony or misdemeanor, deciding factor being that bond is accepted by and returnable to county. Duties and responsibilities of county employee must be kept entirely separate and distinct from any pursuit of his bail bond business. Op. of Miss. Ethics Comm. Op. No. 93-037-E.

§ 25-4-107. Complaints; where brought; removal; initiated by; defendant's right to jury trial.

(1) Any complaint for a violation of this article shall be brought in the circuit court of the county in which the violation occurred; provided, however, that upon the motion of the defendant such action shall be removed to the county in which the defendant resides. Any such complaint may be initiated only by the Mississippi Ethics Commission or the district attorney of the county in which the violation occurred.

(2) The defendant in any trial for a violation of this article shall have the right to a trial by jury; provided, however, that such defendant may, upon proper motion, waive his right to a trial by jury. A unanimous verdict of the jury shall be required for a finding of a violation of this article.

SOURCES: Laws, 1983, ch. 469, § 4, eff from and after July 1, 1983.

Cross references—

Authority of the ethics commission to issue advisory opinions with regard to any standard of conduct set forth in this section, see § 25-4-17.

Prohibition against public official deriving income from issuance of bonds under Mississippi Major Economic Impact Act, see § 57-75-25.

Application of penalty provisions of this section to elected or appointed officials who derive pecuniary benefit as result of duties under Mississippi Gaming Control Act, see § 75-76-281.

JUDICIAL DECISIONS

The jury trial provision of § 25-4-107 does not alter or amend the summary judgment procedure under Rule 56, Miss.R.Civ.P.; the conflicts of interest statute provides for civil remedies and penalties, and the provision for trial by jury means no more than it means in any other civil process before the circuit court. Towner v Moore (1992, Miss) 604 So 2d 1093.

§ 25-4-109. Penalties; elected and nonelected public servants.

(1) Upon a finding by clear and convincing evidence that any elected public servant or other person has violated any provision of this article, a circuit court of competent jurisdiction may censure the elected public servant or remove the elected public servant from office or impose a civil fine of not more than five thousand dollars ($5,000.00) or both.

(2) Upon a finding by clear and convincing evidence that any nonelected public servant has violated any provision of this article, a circuit court of competent jurisdiction may censure, remove, suspend, or order a reduction in pay or demotion of the nonelected public servant or impose a civil fine of not more than five thousand dollars ($5,000.00) or both.

SOURCES: Laws, 1983, ch. 469, § 5, eff from and after July 1, 1983.

Cross references—

Authority of the ethics commission to issue advisory opinions with regard to any standard of conduct set forth in this section, see § 25-4-17.

Prohibited and authorized activities of public servants, see § 25-4-105.

Imposition of conditions described in subsection (2) of this section against public servant by authority head, see § 25-4-111.

Prohibition against public official deriving income from issuance of bonds under Mississippi Major Economic Impact Act, see § 57-75-25.

JUDICIAL DECISIONS

Claims made under §§ 25-4-109 and 25-4-113 were properly joined in one action, even though the statutes require different evidentiary standards, where the several claims asked jointly for relief, arose out of the same transaction or occurrence, and presented common questions of law and fact. Towner v Moore (1992, Miss) 604 So 2d 1093.

§ 25-4-111. Authority head to take action against public servant who has violated article; conditions imposed upon former public servant.

(1) An authority head and any other public servant having the authority to appoint a person to a position of public service, regardless of whether or not such appointment requires the approval of the senate or any other body, employee or person, shall take such action as may be ordered by a circuit court of competent jurisdiction with respect to any public employee within his authority or any such appointee upon a finding by such court that such employee or appointee has violated any provision of this article. Such action may include the imposition of the conditions described in subsection (2) of section 25-4-109.

(2) Upon a finding by a circuit court of competent jurisdiction that a former public servant or other person has violated any provision of this article or any order promulgated hereunder, such court shall bar or impose reasonable conditions upon:

(a) The appearance before any authority of such former public servant or other person.

(b) The conduct of, or negotiation or competition for, business with any authority by such former public servant or other person for such period of time as may be necessary or appropriate to effectuate the purposes of this article.

SOURCES: Laws, 1983, ch. 469, § 6, eff from and after July 1, 1983 [See Editor's Note below].

Editor's Note—

Laws, 1984, ch. 482, § 1, proposed to amend section 25-4-111, effective from and after the date Senate Concurrent Resolution No. 548 of the 1984 regular session of the Mississippi legislature (Chapter 655, Laws, 1984) was ratified by the electorate in November, 1984. Senate Concurrent Resolution No. 548 (Chapter 655, Laws, 1984) proposed to amend § 109 of the Mississippi Constitution, and to repeal §§ 107 and 210 of the Mississippi Constitution. The Senate Concurrent Resolution No. 548 was submitted to the electorate for ratification in November, 1984, but was rejected; thus the proposed amendment to § 25-4-111 never became effective.

Cross references—

Authority of the ethics commission to issue advisory opinions with regard to any standard of conduct set forth in this section, see § 25-4-17.

Prohibited and authorized activities of public servants, see § 25-4-105.

Prohibition against public official deriving income from issuance of bonds under Mississippi Major Economic Impact Act, see § 57-75-25.

§ 25-4-113. Civil action for damages against violator of article; forfeiture or pecuniary benefit; costs and attorneys' fees.

The attorney general of the state of Mississippi or any governmental entity directly injured by a violation of this act may bring a separate civil action against the public servant or other person or business violating the provisions of this article for recovery of damages suffered as a result of such violation. Further, any pecuniary benefit received by or given by a public servant in violation of this article shall be declared forfeited by a circuit court of competent jurisdiction for the benefit of the governmental entity injured. In the discretion of the court, any judgment for damages or forfeiture of pecuniary benefit may include costs of court and reasonable attorney's fees.

SOURCES: Laws, 1983, ch. 469, § 7, eff from and after July 1, 1983.

Cross references—

Authority of the ethics commission to issue advisory opinions with regard to any standard of conduct set forth in this section, see § 25-4-17.

Prohibition against public official deriving income from issuance of bonds under Mississippi Major Economic Impact Act, see § 57-75-25.

Research and Practice References—

Ray, Constitutional and statutory authority of the Attorney General to prosecute actions, 59 Miss L J 165, Spring, 1989.

JUDICIAL DECISIONS

Claims made under §§ 25-4-109 and 25-4-113 were properly joined in one action, even though the statutes require different evidentiary standards, where the several claims asked jointly for relief, arose out of the same transaction or occurrence, and presented common questions of law and fact. Towner v Moore (1992, Miss) 604 So 2d 1093.

§ 25-4-115. Civil liability not precluded.

This article shall not bar, suspend or otherwise restrict any right or liability to damage, penalty, forfeiture, restitution or other remedy authorized by law to be recovered or enforced in a civil action, regardless of whether the conduct involved in the proceeding constituted an offense covered by this article.

SOURCES: Laws, 1983, ch. 469, § 8, eff from and after July 1, 1983.

Cross references—

Authority of the ethics commission to issue advisory opinions with regard to any standard of conduct set forth in this section, see § 25-4-17.

Prohibition against public official deriving income from issuance of bonds under Mississippi Major Economic Impact Act, see § 57-75-25.

§ 25-4-117. Criminal liability not precluded.

The provisions of this article shall be in addition to any criminal laws. Actions taken under the provisions of this article shall not bar prosecution for violations of the criminal law.

SOURCES: Laws, 1983, ch. 469, § 9, eff from and after July 1, 1983.

Cross references—

Authority of the ethics commission to issue advisory opinions with regard to any standard of conduct set forth in this section, see § 25-4-17.

Prohibition against public official deriving income from issuance of bonds under Mississippi Major Economic Impact Act, see § 57-75-25.

§ 25-4-119. Officials not to derive pecuniary benefits as result of official duties; penalties.

No elected or appointed official shall derive any pecuniary benefit, directly or indirectly, as a result of such elected or appointed official's duties under Sections 21-19-33, 27-109-1, 27-109-3, 27-109-7, 27-109-9, 67-1-71, 87-1-5, 95-3-25, 97-33-1, 97-33-7, 97-33-9, 97-33-17, 97-33-25, and 97-33-27. Any person convicted of a violation of this section shall be punished pursuant to the provisions of Article 3, Chapter 4, Title 25, Mississippi Code of 1972.

SOURCES: Laws, 1990, ch. 573, § 15, eff from and after April 1, 1990.

CHAPTER 7

Fees

SEC.
25-7-65. Printers and publishers.

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§ 25-7-65. Printers and publishers.

Printers and publishers shall be entitled to the following fees:

(a) For publishing in a newspaper any summons, order, citation, advertisement or notice required by law to be published in a newspaper, Eight Cents (8¢) for each word it contains for the first insertion, and Five Cents (5¢) for each of said words for each subsequent insertion required by law; provided, however, that as an alternative, such printers and publishers may charge such fees per line which are acceptable to the party placing the publication not to exceed the Eight Cents (8¢) and Five Cents (5¢) per word as set out hereinabove.

When four (4) or more numerals appear consecutively in any such legal publication, four (4) numerals shall be considered as one (1) word, and if there remains a fractional portion of such unit of four (4) numerals therein such fraction shall also be counted as one (1) word. In the case of numbers containing less than four (4) numerals which are isolated from other numerals by words in such publication, the same shall be counted as one (1) word. When tables or tabular matter are included, each line of the standard newspaper column shall be considered as containing at least six (6) words.

(b) For making proof of publication, making a copy thereof, and for deposing to the same, either and all, One Dollar ($1.00); to be paid for both publications and proof on delivery of the proof of publication, but this section shall not apply to the publication of ordinances of municipalities and proceedings of the board of supervisors.

SOURCES: Codes, 1880, §§ 461, 1638; 1892, § 2030; 1906, § 2209; Hemingway's 1917, § 1894; 1930, § 1813; 1942, § 3961; Laws, 1920, ch. 305; 19 44, ch. 320, § 2; 1948, ch. 428; 1958, ch. 331; 1972, ch. 401, § 1; 1983, ch. 520; 1987, ch. 474, eff from and after July 1, 1987.

Cross references—
Summons by publication, see §§ 13-3-19 et seq.
Publication of proceedings of county boards of supervisors, see §§ 19-3-33 and 19-3-35.
Newspaper publication of municipal ordinances, see § 21-13-11.

JUDICIAL DECISIONS

Where two newspapers submitted bids of $15 and $25 per month, respectively, for the publication of the proceedings of a board of supervisors, the board could not award the contract to the newspaper making the $25 bid, on the theory that a stipulation in its bid that it would charge the legal rate for the publication in case the minutes of the board did not amount to $25 as computed by the legal rate might render the amount to be paid less than that stipulated in the other bid, since the law inserted a stipulation to the same effect in the bid of the other newspaper. Klyce v Alcorn County (1942) 192 Miss 440, 6 So 2d 298.

CHAPTER 41

Open Meetings

SEC.
25-41-1. Legislative declaration.
25-41-3. Definitions.
25-41-5. Official meetings of public bodies to be public and open.
25-41-7. Executive sessions.
25-41-9. Conduct of persons attending meetings.
25-41-11. Minutes.
25-41-13. Notice of meetings.
25-41-15. Enforcement.
25-41-17. Chance meetings and social gatherings excluded.

§ 25-41-1. Legislative declaration.

It being essential to the fundamental philosophy of the American constitutional form of representative government and to the maintenance of a democratic society that public business be performed in an open and public manner, and that citizens be advised of and be aware of the performance of public officials and the deliberations and decisions that go into the making of public policy, it is hereby declared to be the policy of the State of Mississippi that the formation and determination of public policy is public business and shall be conducted at open meetings except as otherwise provided herein.

SOURCES: Laws, 1975, ch. 481, § 1, eff from and after January 1, 1976.

Cross references—

Inapplicability of Open Meetings Law to meetings conducted by Farm Mediation Office under Mississippi Farm Reform Act, see § 69-2-47.

Application of this chapter to meetings of the state Advisory Council in Occupational Therapy, see § 73-24-11.

Research and Practice References—

Note, The Personnel Matters Exception to the Mississippi Open Meetings Act—A Cloud Over the Sunshine Law, 7 Miss C L Rev 181, Spring, 1987.

Slyke & Rushing, Sunshine in Mississippi: The Open Meetings Act, 60 Miss L J 283, Fall 1990.

JUDICIAL DECISIONS

Any rules or regulations of administrative boards should provide no less access of the public to their proceedings and records than is afforded under the Open Meetings Act, §§ 25-41-1 et seq. and the Public Records Act, §§ 25-61-1 et seq. State Oil & Gas Bd. v McGowan (1989, Miss) 542 So 2d 244, 105 OGR 63.

Board of trustees of state institution of higher learning is not exempt from Open Meeting Act (§§ 25-41-1 et seq.) under either Mississippi Constitution (§ 213-A) or its companion statute (§§ 37-101-1 et seq.). Board of Trustees v Mississippi Publishers Corp. (1985, Miss) 478 So 2d 269, 12 Media L R 1389.

§ 25-41-3. Definitions.

For purposes of this chapter, the following words shall have the meaning ascribed herein, to-wit:

(a) "Public body" shall mean: (i) any executive or administrative board, commission, authority, council, department, agency, bureau or any other policymaking entity, or committee thereof, of the State of Mississippi, or any political subdivision or municipal corporation of the state, whether such entity be created by statute or executive order, which is supported wholly or in part by public funds or expends public funds, and (ii) any standing, interim or special committee of the Mississippi Legislature. There shall be exempted from the provisions of this chapter the judiciary, including all jury deliberations, public and private hospital staffs, public and private hospital boards and committees thereof, law enforcement officials, the military, the State Probation and Parole Board, the Workers' Compensation Commission, legislative subcommittees and legislative conference committees, and license revocation, suspension and disciplinary proceedings held by the Mississippi State Board of Dental Examiners.

(b) "Meeting" shall mean an assemblage of members of a public body at which official acts may be taken upon a matter over which the public body has supervision, control, jurisdiction or advisory power.

SOURCES: Laws, 1975, ch. 481, § 2; 1991, ch. 483, § 34, eff from and after July 1, 1991.

Cross references—
Mississippi State Board of Dental Examiners, see § 73-9-1, et seq.

Research and Practice References—
Note, The Personnel Matters Exception to the Mississippi Open Meetings Act—A Cloud Over the Sunshine Law. 7 Miss C L Rev 181, Spring, 1987.
Slyke & Rushing, Sunshine in Mississippi: The Open Meetings Act. 60 Miss L J 283, Fall 1990.

JUDICIAL DECISIONS

The attendance by members of a County Board of Supervisors individually or in a body at social functions or at charities, or with industry or business representatives when their only purpose and function is to listen, and to take no official action at the time, are not public meetings within the Open Meetings Act. Hinds County Bd. of Supervisors v Common Cause of Mississippi (1989, Miss) 551 So 2d 107.

Meetings held by a County Board of Supervisors with city officials and several other people to discuss developing a sewage system in the southern part of the county to induce homeowners to build in that area, were official meetings under the Open Meetings Act. Hinds County Bd. of Supervisors v Common Cause of Mississippi (1989, Miss) 551 So 2d 107.

Meeting is within Open Meeting Act when there is assemblage of members of public body at which official acts, including actions relating to formation and determination of public policy, may be taken; although purely social functions are not covered, factors to consider in making determination of whether activity is business or social include activity that takes place at function, advance call or notice given members, agenda, claim for per diem and travel expenses by members, and other pertinent factors. Board of Trustees v Mississippi Publishers Corp. (1985, Miss) 478 So 2d 269, 12 Media L R 1389.

State board of trustees of state institutions of higher learning is "public body" within meaning of § 25-41-3(a) of Open Meetings Act; executive session meetings between state board and its university presidents and staff are "meetings" under § 25-41-3(a), and are thus subject to Open Meetings Act. Mississippi Publishers Corp. v Board of Trustees (1983, Miss Ch) 9 Media L Rptr 2450.

§ 25-41-5. Official meetings of public bodies to be public and open.

All official meetings of any public body, unless otherwise provided in this chapter or in the Constitutions of the United States of America or the State of Mississippi, are declared to be public meetings and shall be open to the public at all times unless declared an executive session as provided in section 25-41-7.

SOURCES: Laws, 1975, ch. 481, § 3, eff from and after January 1, 1976.

Cross references—
Applicability of this chapter to meetings of the Infant Mortality Task Force, see § 41-89-3.

Research and Practice References—
2 Am Jur 2d, Administrative Law § 229.
56 Am Jur 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 161.
Note, The Personnel Matters Exception to the Mississippi Open Meetings Act—A Cloud Over the Sunshine Law. 7 Miss C L Rev 181, Spring, 1987.
1985 Mississippi Supreme Court Review—Administrative Law. 55 Miss L J 735, December 1985.
Slyke & Rushing, Sunshine in Mississippi: The Open Meetings Act. 60 Miss L J 283, Fall 1990.

Annotations—
Validity, construction, and application of statutes making public proceedings open to the public. 38 ALR3d 1070.

JUDICIAL DECISIONS

Requirement that official meetings be open to public at all times may not be avoided by use of telephone polls among members of public body to conduct official acts; however, recording of final vote by telephone is not prohibited where vote is reduced to public record and all deliberation prior to final vote has taken place in accordance with Open Meetings Act. Board of Trustees v Mississippi Publishers Corp. (1985, Miss) 478 So 2d 269, 12 Media L R 1389.

Academic program review, evaluation of curriculum offerings in state universities, conducted by Board of Trustees of State Institutions of Higher Learning must be open and public. Board of Trustees v Mississippi Publishers Corp. (1985, Miss) 478 So 2d 269, 12 Media L R 1389.

§ 25-41-7. Executive sessions.

(1) Any public body may enter into executive session for the transaction of public business; provided, however, all meetings of any such public body shall commence as an open meeting, and an affirmative vote of three-fifths (3/5) of all members present shall be required to declare an executive session.

(2) The procedure to be followed by any public body in declaring an executive session shall be as follows: Any member shall have the right to request by motion a closed determination upon the issue of whether or not to declare an executive session. Such motion, by majority vote, shall require the meeting to be closed for

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a preliminary determination of the necessity for executive session. No other business shall be transacted until the discussion of the nature of the matter requiring executive session has been completed and a vote, as required in subsection (1) hereof, has been taken on the issue.

(3) An executive session shall be limited to matters allowed to be exempted from open meetings by subsection (4) of this section. The reason for holding such an executive session shall be stated in an open meeting, and the reason so stated shall be recorded in the minutes of the meeting. Nothing in this section shall be construed to require that any meeting be closed to the public, nor shall any executive session be used to circumvent or to defeat the purposes of this chapter.

(4) A public body may hold an executive session pursuant to this section for one or more of the following reasons:

(a) Transaction of business and discussion of personnel matters relating to the job performance, character, professional competence, or physical or mental health of a person holding a specific position.

(b) Strategy sessions or negotiations with respect to prospective litigation, litigation or issuance of an appealable order when an open meeting would have a detrimental effect on the litigating position of the public body.

(c) Transaction of business and discussion regarding the report, development or course of action regarding security personnel, plans or devices.

(d) Investigative proceedings by any public body regarding allegations of misconduct or violation of law.

(e) Any body of the Legislature which is meeting on matters within the jurisdiction of such body.

(f) Cases of extraordinary emergency which would pose immediate or irrevocable harm or damage to persons and/or property within the jurisdiction of such public body.

(g) Transaction of business and discussion regarding the prospective purchase, sale or leasing of lands.

(h) Discussions between a school board and individual students who attend a school within the jurisdiction of such school board or the parents or teachers of such students regarding problems of such students or their parents or teachers.

(i) Transaction of business and discussion concerning the preparation of tests for admission to practice in recognized professions.

(j) Transaction of business and discussions or negotiations regarding the location, relocation or expansion of a business or an industry.

(k) Transaction of business and discussions regarding employment or job performance of a person in a specific position or termination of an employee holding a specific position. The exemption provided by this paragraph includes the right to enter into executive session concerning a line item in a budget which might affect the termination of an employee or employees. All other budget items shall be considered in open meetings and final budgetary adoption shall not be taken in executive session.

(5) The total vote on the question of entering into an executive session shall be recorded and spread upon the minutes of such public body.

(6) Any such vote whereby an executive session is declared shall be applicable only to that particular meeting on that particular day.

SOURCES: Laws, 1975, ch. 481, § 4; 1981, ch. 456, § 1; 1990, ch. 541, § 1, eff from and after July 1, 1990.

Cross references—

Application of this section to executive sessions of the Environmental Protection Council, see § 5-3-159.

Application of this section to the Mississippi Gaming Commission, see § 75-76-13.

Research and Practice References—

2 Am Jur 2d, Administrative Law § 229.

56 Am Jur 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 161.

Note, The Personnel Matters Exception to the Mississippi Open Meetings Act—A cloud over the sunshine law. 7 Miss C L Rev 181, Spring, 1987.

Slyke & Rushing, Sunshine in Mississippi: The Open Meetings Act. 60 Miss L J 283, Fall 1990.

Annotations—

Validity, construction, and application of statutes making public proceedings open to the public. 38 ALR3d 1070.

JUDICIAL DECISIONS

The attendance by members of a County Board of Supervisors individually or in a body at social functions or at charities, or with industry or business representatives when their only purpose and function is to listen, and to take no official action at the time, are not public meetings within the Open Meetings Act. Hinds County Bd. of Supervisors v Common Cause of Mississippi (1989, Miss) 551 So 2d 107.

Within the framework of the statutory language of the Open Meetings Act itself, all statutory exceptions must, under the spirit and philosophy of the Act, be strictly construed against executive sessions. Even though an executive session might come under "personnel matters," or another of the subjects listed under § 25-41-7(4), this in and of itself is insufficient in the absence of at least a reasonably arguable basis of an actual, present need for a closed meeting on the subject. Hinds County Bd. of Supervisors v Common Cause of Mississippi (1989, Miss) 551 So 2d 107.

Under § 25-41-7(4), "personnel matters" were restricted to matters dealing with employees hired and supervised by a County Board of Supervisors, not those employees of some other county officials, and not other county officials themselves. Nor, would a member of the Board of Supervisors be classified "personnel." Moreover, an independent contractor such as an accountant, lawyer, or architect is not an employee of the Board, and would not come under "personnel." Thus, the Board was not entitled to go into executive session under the "personnel matters" exception to consider appointments to fill a vacancy on the Board, to discuss employees of some other county official, or to consider the employment of, or discussions with, an architect concerning his employment. Hinds County Bd. of Supervisors v Common Cause of Mississippi (1989, Miss) 551 So 2d 107.

Under § 25-41-7, the reason given for going into executive session must be meaningful. The reason stated must be of sufficient specificity to inform those present that there is in reality a specific, discrete matter or area which the public body had determined should be discussed in executive session. The public body may then go into executive session to discuss this one matter, and, when concluded, must re-open the meeting. No matter may be discussed at the executive session other than the announced subject. Hinds County Bd. of Supervisors v Common Cause of Mississippi (1989, Miss) 551 So 2d 107.

Total vote on question of entering into executive session must be recorded, by individual member's expression, in minutes. Board of Trustees v Mississippi Publishers Corp. (1985, Miss) 478 So 2d 269, 12 Media L R 1389.

As term "personnel" used in § 25-41-7 is not defined within Open Meetings Act, its use is of common and ordinary meaning and any further definition must be addressed by court on case-by-case development guided by general rules of statutory definition together with legislative intent of act and its declared policy. Board of Trustees v Mississippi Publishers Corp. (1985, Miss) 478 So 2d 269, 12 Media L R 1389.

The meeting of a city planning commission, which was a "public body" within the meaning of § 25-41-3(a), with two professional city planners, each of whom had provided expert testimony in prior annexation trials, to consider possible expansion of the city through annexation of additional lands, came within the litigation exception to the statute, even though no attorneys were present, since annexation confirmation proceedings are "litigation" within the meaning of the section, since opposition to the proposed annexation was reasonably expected by the commission, since the minutes of the meeting clearly indicated it was a strategy session with respect to the prospective litigation, and since the annexation confirmation proceedings were "prospective litigation" within the meaning of the section, that is, litigation reasonably likely to occur in the reasonably foreseeable future; and thus, the planning commission had the lawful power to hold an executive session and exclude from it members of the press and public. Vicksburg v Vicksburg Printing & Pub. Co. (1983, Miss) 434 So 2d 1333, 9 Media L R 2279.

§ 25-41-9. Conduct of persons attending meetings.

Any public body may make and enforce reasonable rules and regulations for the conduct of persons attending its meetings.

SOURCES: Laws, 1975, ch. 481, § 5, eff from and after January 1, 1976.

Research and Practice References—

56 Am Jur 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 162.

Note, The Personnel Matters Exception to the Mississippi Open Meetings Act—A cloud over the sunshine law. 7 Miss C L Rev 181, Spring, 1987.

Slyke & Rushing, Sunshine in Mississippi: The Open Meetings Act. 60 Miss L J 283, Fall 1990.

§ 25-41-11. Minutes.

Minutes shall be kept of all meetings of a public body, whether in open or executive session, showing the members present and absent; the date, time and place of the meeting; an accurate recording of any final actions taken at such meeting; and a record, by individual member, of any votes taken; and any other information that the public body requests be included or reflected in the minutes. The minutes shall be recorded within a reasonable time not to exceed thirty (30) days after recess or adjournment and shall be open to public inspection during regular business hours.

Minutes of legislative committee meetings shall consist of a written record of attendance and final actions taken at such meetings.

SOURCES: Laws, 1975, ch. 481, § 6; 1981, ch. 456, § 2, eff from and after July 1, 1981.

Research and Practice References—

2 Am Jur 2d, Administrative Law § 230.

56 Am Jur 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 177.

Note, The Personnel Matters Exception to the Mississippi Open Meetings Act—A cloud over the sunshine law. 7 Miss C L Rev 181, Spring, 1987.

Slyke & Rushing, Sunshine in Mississippi: The Open Meetings Act. 60 Miss L J 283, Fall 1990.

JUDICIAL DECISIONS

Total vote on question of entering into executive session must be recorded, by individual member's expression, in minutes. Board of Trustees v Mississippi Publishers Corp. (1985, Miss) 478 So 2d 269, 12 Media L R 1389.

§ 25-41-13. Notice of meetings.

(1) Any public body which holds its meetings at such times and places and by such procedures as are specifically prescribed by statute shall continue to do so and no additional notice of such meetings shall be required except that a notice of the place, date, hour and subject matter of any recess meeting, adjourned meeting, interim meeting or any called special meeting shall be posted within one (1) hour after such meeting is called in a prominent place available to examination and inspection by the general public in the building in which the public body normally meets. A copy of the notice shall be made a part of the minutes or other permanent official records of the public body.

(2) Any public body, other than a legislative committee, which does not have statutory provisions prescribing the times and places and the procedures by which its meetings are to be held shall, at its first regular or special meeting after July 1, 1990 spread upon its minutes the times and places and the procedures by which all of its meetings are to be held.

(3) During a regular or special session of the Mississippi Legislature, notice of meetings of all committees, other than conference committees, shall be given by announcement on the loudspeaker during sessions of the House of Representatives or Senate or by posting on a bulletin board provided for that purpose by each body.

(4) When not in session, the meeting times and places of all committees shall be kept by the Clerk of the House of Representatives as to House committees and by the Secretary of the Senate as to Senate committees, and shall be available at all times during regular working hours to the public and news media.

SOURCES: Laws, 1975, ch. 481, § 7; 1990, ch. 541, § 2, eff from and after July 1, 1990.

Cross references—
Duties of secretary of senate and clerk of house of representatives generally, see § 5-1-31.
Applicability of this chapter to meetings of the Infant Mortality Task Force, see § 41-89-3.

Research and Practice References—
2 Am Jur 2d, Administrative Law § 228.
56 Am Jur 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 158, 159.
Note, The Personnel Matters Exception to the Mississippi Open Meetings Act—A cloud over the sunshine law. 7 Miss C L Rev 181, Spring, 1987.
Slyke & Rushing, Sunshine in Mississippi: The Open Meetings Act. 60 Miss L J 283, Fall 1990.

Annotations—
Validity, construction, and application of statutes making public proceedings open to the public. 38 ALR3d 1070.

JUDICIAL DECISIONS

While a school board's failure to record any notice of a special board meeting was a violation of the Mississippi Open Meetings Act, this violation did not void the actions of the school board taken at that meeting. Shipman v North Panola Consol. Sch. Dist. (1994, Miss) 641 So 2d 1106.

§ 25-41-15. Enforcement.

The chancery courts of this state shall have the authority to enforce the provisions of this chapter upon application of any citizen of the state, and shall have the authority to issue injunctions or writs of mandamus to accomplish that purpose.

SOURCES: Laws, 1975, ch. 481, § 8, eff from and after January 1, 1976.

Research and Practice References—
Note, The Personnel Matters Exception to the Mississippi Open Meetings Act—A cloud over the sunshine law. 7 Miss C L Rev 181, Spring, 1987.
Slyke & Rushing, Sunshine in Mississippi: The Open Meetings Act. 60 Miss L J 283, Fall 1990.

§ 25-41-17. Chance meetings and social gatherings excluded.

The provisions of this chapter shall not apply to chance meetings or social gatherings of members of a public body.

SOURCES: Laws, 1981, ch. 456, § 3, eff from and after July 1, 1981.

Research and Practice References—
Note, The Personnel Matters Exception to the Mississippi Open Meetings Act—A cloud over the sunshine law. 7 Miss C L Rev 181, Spring, 1987.

Slyke & Rushing, Sunshine in Mississippi: The Open Meetings Act. 60 Miss L J 283, Fall 1990.

Annotations—

Validity, construction, and application of statutes making public proceedings open to the public. 38 ALR 3d 1070.

JUDICIAL DECISIONS

Meeting is within Open Meeting Act when there is assemblage of members of public body at which official acts, including actions relating to formation and determination of public policy, may be taken; although purely social functions are not covered, factors to consider in making determination of whether activity is business or social include activity that takes place at function, advance call or notice given members, agenda, claim for per diem and travel expenses by members, and other pertinent factors. Board of Trustees v Mississippi Publishers Corp. (1985, Miss) 478 So 2d 269, 12 Media L R 1389.

CHAPTER 51

State Depository for Public Documents

SEC.

25-51-1. Designation.
25-51-3. Agencies to furnish copies of documents.
25-51-5. Semiannual lists of public documents.
25-51-7. Recorder of public documents.

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§ 25-51-1. Designation.

The Mississippi Library Commission shall be the state depository for the public records issued by any government agency for public distribution. The libraries of state agencies, public junior colleges, colleges, public universities and public libraries located in the state may also become depositories of these records, when designated as such by the director of the Mississippi Library Commission upon their written request to this effect.

SOURCES: Codes, 1942, § 4228-21; Laws, 1966. ch. 555, § 1; 1975, ch. 347, § 1, eff from and after July 1, 1975.

Cross references—
Bureau of vital statistics, see §§ 41-57-1 et seq.

Research and Practice References—
2 Am Jur Trials, Locating Public Records, § 54.

§ 25-51-3. Agencies to furnish copies of documents.

All agencies of state government shall furnish to the director of the Mississippi Library Commission sufficient copies of each public document printed, and the director of the Mississippi Library Commission shall deliver to each depository as many as two (2) copies of each document requested. These records shall be made accessible by the depository receiving them to any person desiring to examine the same.

SOURCES: Codes, 1942, § 4228-22; Laws, 1966, ch. 555, § 2; 1975, ch. 347, § 2, eff from and after July 1, 1975.

§ 25-51-5. Semiannual lists of public documents.

Each agency of state government shall furnish to the director of the Mississippi Library Commission semiannually a list of all its publications issued for public distribution, and the director of the Mississippi Library Commission shall make and furnish to each depository a duplicate copy of the same.

SOURCES: Codes, 1942, § 4228-23; Laws, 1966, ch. 555, § 3; 1975, ch. 347, § 3, eff from and after July 1, 1975.

§ 25-51-7. Recorder of public documents.

A recorder of documents shall be appointed by the director of the Mississippi Library Commission in his office, whose functions shall be to administer the provisions of this chapter under the supervision of the director of the Mississippi Library Commission.

SOURCES: Codes, 1942, § 4228-24; Laws, 1966, ch. 555, § 4; 1975, ch. 347, § 4, eff from and after July 1, 1975.

CHAPTER 61

Public Access to Public Records

SEC.

25-61-1. Short title.
25-61-3. Definitions.
25-61-5. Public access to records; form and retention of denials.
25-61-7. Fees for costs incident to providing records.
25-61-9. Certain records furnished by third parties; protection; procedure; application of Trade Secrets Act.
25-61-11. Records exempted or privileged by law.
25-61-13. Proceedings to compel public access to records; procedure; remedies.
25-61-15. Penalty for wrongful denial of access to record.
25-61-17. Chapter not to affect legislature.

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§ 25-61-1. Short title.

This chapter shall be known and may be cited as the "Mississippi Public Records Act of 1983."

SOURCES: Laws, 1983, ch. 424, § 1, eff from and after July 1, 1983.

Cross references—

Evaluation of person applying for employment as principal, see § 37-3-2.

Evaluation of certified administrator applying for employment as principal, see § 37-3-2.

Exemption from chapter of records relating to applications for licenses to carry concealed pistols or revolvers, see § 45-9-101.

Application of this section to the disclosure of records, reports or information obtained pursuant to the underground storage tank act of 1988, see § 49-17-425.

Inapplicability of this chapter to information received by Farm Mediation Office established under Mississippi Farm Reform Act, see § 69-2-47.

Applications, bonds, records and other papers filed with commissioner pursuant to the Small Loan Privilege Tax Law subject to Public Records Act, see § 75-67-231.

Exemption from chapter of information relating to investigation or examination under Mississippi Securities Act, see § 75-71-111.

Application of this chapter to Mississippi Commodities Enforcement Act, see § 75-89-27.

Withholding from public disclosure records maintained by domestic violence shelters, see § 93-21-109.

JUDICIAL DECISIONS

Any rules or regulations of administrative boards should provide no less access of the public to their proceedings and records than is afforded under the Open Meetings Act, §§ 25-41-1 et seq. and the Public Records Act, §§ 25-61-1 et seq. State Oil & Gas Bd. v McGowan (1989, Miss) 542 So 2d 244, 105 OGR 63.

Closure order in criminal trial did not violate newspapers' right of access to public records because that right is not of constitutional dimensions, instead being derived from common law and applicable statutes. Mississippi Publishers Corp. v Coleman (1987, Miss) 515 So 2d 1163, 14 Media L R 2005.

§ 25-61-3. Definitions.

The following words shall have the meanings ascribed herein unless the context clearly requires otherwise:

(a) "Public body" shall mean any department, bureau, division, council, commission, committee, subcommittee, board, agency and any other entity of the state or a political subdivision thereof, and any municipal corporation and any other entity created by the Constitution or by law, executive order, ordinance or resolution. Within the meaning of this chapter, the term "entity" shall not be construed to include individuals employed by a public body or any appointed or elected public official.

(b) "Public records" shall mean all books, records, papers, accounts, letters, maps, photographs, films, cards, tapes, recordings or reproductions thereof, and any other documentary materials, regardless of physical form or characteristics, having been used, being in use, or prepared, possessed or retained for use in the conduct, transaction or performance of any business, transaction, work, duty or function of any public body, or required to be maintained by any public body.

SOURCES: Laws, 1983, ch. 424, § 2, eff from and after July 1, 1983.

Cross references—

Exemption of judicial records in possession of public body, see § 9-1-38.

Exemption of jury records in possession of public body, see § 13-5-97.

Exemption of certain personnel records in possession of public body, see § 25-1-100.
Exemption of certain attorney's work product in possession of public body, see § 25-1-102.
Application of this chapter to the legislature, see § 25-61-17.
Exemption of certain individual tax records in possession of public body, see § 27-3-77.
Exemption of certain appraisal records in possession of public body, see § 31-1-27.
Exemption of certain academic records in possession of public body, see § 37-11-51.
Exemption of certain archaeological records in possession of public body, see § 39-7-41.
Records and reports compiled in accordance with the Mississippi Medical Examiner Act of 1986, see §§ 41-61-63 and 41-61-73.
Exemption of certain criminal investigation records in possession of public body, see §§ 45-29-1 and 45-29-3.
Restrictions on examination of workers' compensation records, see § 71-3-66.
Exemption of certain licensure application and examination records in possession of public body, see § 73-52-1.
Exemption of commercial and financial information of proprietary nature required to be submitted to public body, see § 79-23-1.

Annotations—
State freedom of information act requests: right to receive information in particular medium or format. 86 ALR4th 786.
Public access to records and proceedings of civil actions in Federal District Courts. 96 ALR Fed 769.

§ 25-61-5. Public access to records; form and retention of denials.

(1) Except as otherwise provided by sections 25-61-9 and 25-61-11, all public records are hereby declared to be public property, and any person shall have the right to inspect, copy or mechanically reproduce or obtain a reproduction of any public record of a public body in accordance with reasonable written procedures adopted by the public body concerning the cost, time, place and method of access, and public notice of the procedures shall be given by the public body, or, in the event that a public body has not adopted such written procedures, the right to inspect, copy or mechanically reproduce or obtain a reproduction of a public record of the public body shall be provided within one (1) working day after a written request for a public record is made. No public body shall adopt procedures which will authorize the public body to produce or deny production of a public record later than fourteen (14) working days from the date of request for the production of such record.

(2) Denial by a public body of a request for access to or copies of public records under this chapter shall be in writing and shall contain a statement of the specific reasons for the denial. Each public body shall maintain a file of all denials of requests for public records. Public bodies shall be required to preserve such denials on file for not less than three (3) years from the date such denials are made. This file shall be made available for inspection and/or copying during regular office hours to any person upon written request.

SOURCES: Laws, 1983, ch. 424, § 3, eff from and after July 1, 1983.

Cross references—
Exemption of certain judicial records from chapter, see § 9-1-38.
Exemption of certain jury records from chapter, see § 13-5-97.
Exemption of certain personnel records from chapter, see § 25-1-100.
Exemption of certain attorneys' work products from chapter, see § 25-1-102.
Exemption of documents from third parties containing confidential information, see § 25-61-9.
Exemptions of records otherwise imposed by law, see § 25-61-11.
Proceedings to compel public access to public records under this section, see § 25-61-13.
Penalty for wrongful denial of access to records, see § 25-61-15.
Application of this chapter to legislature, see § 25-61-17.
Exemption of certain individual tax records from chapter, see § 27-3-77.
Exemption of certain appraisal records from chapter, see § 31-1-27.
Exemption of certain academic records from chapter, see § 37-11-51.
Exemption of certain archaeological records from chapter, see § 39-7-41.
Records and reports compiled in accordance with the Mississippi Medical Examiner Act of 1986, see §§ 41-61-63 and 41-61-73.
Exemption of certain hospital records from chapter, see § 41-9-68.
Certain persons not entitled to access to records of bureau of vital statistics, see § 41-57-2.
Exemption of certain investigative and criminal justice records from chapter, see § 45-29-1.
Financial records, except trade secrets, of nonprofit corporation formed to manage prison industries subject to provisions of this chapter, see § 47-5-575.
Restrictions on examination of workers' compensation records, see § 71-3-66.
Exemption of certain licensure application and examination records from chapter, see § 73-52-1.
Exemption of certain commercial and financial records from chapter, see § 79-23-1.

Annotations—
What constitutes legitimate research justifying inspection of state or local public records not open to inspection by general public. 40 ALR4th 333.
State freedom of information act requests: right to receive information in particular medium or format. 86 ALR4th 786.
Public access to records and proceedings of civil actions in Federal District Courts. 96 ALR Fed 769.
When are government records "medical files" exempt from disclosure under Freedom of Information Act provision (5 USCS § 552(b)(6)) exempting certain personnel, "medical," and similar files. 104 ALR Fed 734.

When are government records "personnel files" exempt from disclosure under Freedom of Information Act provision (5 USCS § 552(b)(6)) exempting certain "personnel," medical, and similar files. 104 ALR Fed 757.

When are government records "similar files" exempt from disclosure under Freedom of Information Act provision (5 USCS § 552(b)(6)) exempting certain personnel, medical, and "similar" files. 106 ALR Fed 94.

§ 25-61-7. Fees for costs incident to providing records.

Each public body may establish and collect fees reasonably calculated to reimburse it for, and in no case to exceed, the actual cost of searching, reviewing and/or duplicating and, if applicable, mailing copies of public records. Such fees shall be collected by the public body in advance of complying with the request.

SOURCES: Laws, 1983, ch. 424, § 4, eff from and after July 1, 1983.

JUDICIAL DECISIONS

In an action by the state executive committee of a political party against the state commissioner for public safety in connection with a dispute over the proper fee for access to the complete drivers license records of the state, under §§ 25-61-7 and 45-1-21, the amount of the fee to be commensurate with the actual cost to the state of providing the copies of those records. Roberts v Mississippi Republican Party State Executive Committee (1985, Miss) 465 So 2d 1050.

Political party provided with access to drivers license records may be charged only for actual cost of providing copies of records. Roberts v Mississippi Republican Party State Executive Committee (1985, Miss) 465 So 2d 1050.

In dispute over reasonableness of fee charged for providing drivers license records to political party, both § 25-61-7 and § 45-1-21 must be given effect since there is no express repeal of § 45-1-21 and no irreconcilable conflict between statutes. Roberts v Mississippi Republican Party State Executive Committee (1985, Miss) 465 So 2d 1050.

§ 25-61-9. Certain records furnished by third parties; protection; procedure; application of Trade Secrets Act.

(1) Records furnished to public bodies by third parties which contain trade secrets or confidential commercial or financial information shall not be subject to inspection, examination, copying or reproduction under this chapter until notice to said third parties has been given, but such records shall be released within a reasonable period of time unless the said third parties shall have obtained a court order protecting such records as confidential.

(2) If any public record which is held to be exempt from disclosure pursuant to this chapter contains material which is not exempt pursuant to this chapter, the public body shall separate the exempt material and make the nonexempt material available for examination and/or copying as provided for in this chapter.

(3) Trade secrets and confidential commercial and financial information of a proprietary nature developed by a college or university under contract with a firm, business, partnership, association, corporation, individual or other like entity shall not be subject to inspection, examination, copying or reproduction under this chapter.

(4) Misappropriation of a trade secret shall be governed by the provisions of the Mississippi Uniform Trade Secrets Act, Sections 75-26-1 through 75-26-19.

(5) A waste minimization plan and any updates developed by generators and facility operators under the Mississippi Comprehensive Multimedia Waste Minimization Act of 1990 shall be retained at the facility and shall not be subject to inspection, examination, copying or reproduction under this chapter.

SOURCES: Laws, 1983, ch. 424, § 5; 1988, ch. 406, § 1; 1990, ch. 442, § 12; 1990, ch. 507, § 15, eff from and after June 1, 1990.

Cross references—

Exemption of certain judicial records from chapter, see § 9-1-38.
Exemption of certain jury records from chapter, see § 13-5-97.
Exemption of certain personnel records from chapter, see § 25-1-100.
Exemption of certain attorneys' work products from chapter, see § 25-1-102.
Exemption of records otherwise imposed by law, see § 25-61-11.
Exemption of certain individual tax records from chapter, see § 27-3-77.
Exemption of certain appraisal records from chapter, see § 31-1-27.
Exemption of certain academic records from chapter, see § 37-11-51.
Exemption of certain archaeological records from chapter, see § 39-7-41.
Exemption of certain hospital records from chapter, see § 41-9-68.
Certain persons not entitled to access to records of bureau of vital statistics, see § 41-57-2.
Exemption of certain investigative and criminal justice records from chapter, see § 45-29-1.
Financial records, except trade secrets, of nonprofit corporation formed to manage prison industries subject to provisions of this chapter, see § 47-5-575.
Mississippi Comprehensive Multimedia Waste Minimization Act, see § 49-31-1 et seq.

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Restrictions on examination of workers' compensation records, see § 71-3-66.
Exemption of certain licensure application and examination records from chapter, see § 73-52-1.
Protection of trade secrets or confidential commercial or financial information by public utility under this section, see § 79-23-1.
Exemption of certain commercial and financial records from chapter, see § 79-23-1.
Records provided by insurer in course of financial examination by Commissioner of Insurance not required to be made public under Public Records Act, see § 83-5-209.

§ 25-61-11. Records exempted or privileged by law.

The provisions of this chapter shall not be construed to conflict with, amend, repeal or supersede any constitutional or statutory law or decision of a court of this state or the United States which at the time of this chapter is effective or thereafter specifically declares a public record to be confidential or privileged, or provides that a public record shall be exempt from the provisions of this chapter.

SOURCES: Laws, 1983, ch. 424, § 6, eff from and after July 1, 1983.

Editor's Note—
"The time this chapter is effective", referred to in this section, is July 1, 1983, as provided by Laws, 1983, ch. 424, § 23.

Cross references—
Exemption of certain judicial records from chapter, see § 9-1-38.
Exemption of certain jury records from chapter, see § 13-5-97.
Exemption of certain personnel records from chapter, see § 25-1-100.
Exemption of certain attorneys' work products from chapter, see § 25-1-102.
Exemption of confidential information furnished by third parties, see § 25-61-9.
Exemption of certain individual tax records from chapter, see § 27-3-77.
Exemptions of certain appraisal records from chapter, see § 31-1-27.
Exemption of certain academic records from chapter, see § 37-11-51.
Exemption of certain archaeological records from chapter, see § 39-7-41.
Exemption of certain hospital records from chapter, see § 41-9-68.
Exemption of reports of Hepatitis B or HIV carrier status of health care providers from Public Records Law, see § 41-32-7.
Certain persons not entitled to access to records of bureau of vital statistics, see § 41-57-2.
Records and reports compiled in accordance with the Mississippi Medical Examiner Act of 1986, see §§ 41-61-63 and 41-61-73.
Confidentiality of certain information involving ambulatory surgical facilities, see § 41-75-19.
Exemption from chapter of records relating to applications for licenses to carry concealed pistols or revolvers, see § 45-9-101.
Exemption of certain investigative and criminal justice records from chapter, see § 45-29-1.
Exemption of environmental self-evaluation reports, see § 49-2-71.
Restrictions on examination of workers' compensation records, see § 71-3-66.
Exemption of certain licensure application and examination records from chapter, see § 73-52-1.
Exemption of certain commercial and financial records from chapter, see § 79-23-1.

Annotations—
What constitutes legitimate research justifying inspection of state or local public records not open to inspection by general public. 40 ALR4th 333.

§ 25-61-13. Proceedings to compel public access to records; procedure; remedies.

(1) Any person denied the right granted by section 25-61-5 to inspect and/or copy public records may institute a suit in the chancery court of the county in which the public body is located, and the court shall determine whether such public record is exempt from the provisions of this chapter, and in making such determination the court shall take into consideration any constitutional or statutory law or decision of any court of this state or the United States or any rule of common law. Process shall be served on the proper officials according to law.

(2) In any suit filed under subsection (1) of this section, the court has the authority to prohibit the public body from withholding the public records, to order the production of any public records improperly withheld from the person seeking disclosure, and to grant such other equitable relief as may be proper. The court, on its own motion, may privately view the public records in controversy before reaching a decision.

(3) Proceedings arising under this section shall take precedence on the docket over all other matters and shall be assigned for hearing and trial at the earliest practicable date and expedited in every way. Such suits may be heard in termtime or in vacation.

(4) Any suit filed under this section shall be subject to all the rights and rules of appeal for other suits arising in chancery court.

SOURCES: Laws, 1983, ch. 424, § 7, eff from and after July 1, 1983.

Cross references—
Exemption of certain judicial records from chapter, see § 9-1-38.

Authority of chancellor to try causes in vacation, see § 9-5-1.
Appeals from chancery court, generally, see §§ 11-51-1 et seq.
Exemption of certain jury records from chapter, see § 13-5-97.
Exemption of certain personnel records from chapter, see § 25-1-100.
Exemption of certain attorneys' work products from chapter, see § 25-1-102.
Exemption of certain confidential information furnished by third parties, see § 25-61-9.
Exemption from chapter otherwise imposed by law, see § 25-61-11.
Penalty for wrongful denial of access to records, see § 25-61-15.
Exemption of certain individual tax records from chapter, see § 27-3-77.
Exemption of certain appraisal records from chapter, see § 31-1-27.
Exemption of certain academic records from chapter, see § 37-11-51.
Exemption of certain hospital records from chapter, see § 41-9-68.
Certain persons not entitled to access to records of bureau of vital statistics, see § 41-57-2.
Protection of identity of confidential informants and persons under investigation in hearings conducted under this section, see § 45-29-1.
Exemption of certain investigative and criminal justice records from chapter, see § 45-29-1.
Restrictions on examination of workers' compensation records, see § 71-3-66.
Exemption of certain licensure application and examination records from chapter, see § 73-52-1.
Exemption of certain commercial and financial records from chapter, see § 79-23-1.

Research and Practice References—

Abbott, Venue of transitory actions against resident individual citizens in Mississippi-Statutory revision could remove needless complexity. 58 Miss L J 1, Spring, 1988.

Annotations—

What constitutes legitimate research justifying inspection of state or local public records not open to inspection by general public. 40 ALR4th 333.

Public access to records and proceedings of civil actions in Federal District Courts. 96 ALR Fed 769.

JUDICIAL DECISIONS

Venue was not proper in Forrest County while action in Hinds County was pending and abeyance agreed to, where statute provided that one aggrieved by denial of access to public records could institute suit in Chancery Court of County in which public body was located; contention that Board of Trustees of state institutions of higher learning could be sued in any county where it did business was rejected, where to do so would require Board to defend actions in all 82 counties; Chancery Court has no jurisdiction over defendant who neither resides nor is found in county where suit is filed, absent waiver. Board of Trustees v Slyke (1987, Miss) 510 So 2d 490.

§ 25-61-15. Penalty for wrongful denial of access to record.

Any person who shall willfully and knowingly deny to any person access to any public record which is not exempt from the provisions of this chapter shall be liable civilly in a sum not to exceed one hundred dollars ($100.00), plus all reasonable expenses incurred by such person bringing the lawsuit.

SOURCES: Laws, 1983, ch. 424, § 8, eff from and after July 1, 1983.

Cross references—

Exemption of certain judicial records from chapter, see § 9-1-38.
Exemption of certain jury records from chapter, see § 13-5-97.
Exemption of certain personnel records from chapter, see § 25-1-100.
Exemption of certain attorneys' work products from chapter, see § 25-1-102.
Exemption of certain confidential information furnished by third parties, see § 25-61-9.
Exemption from chapter otherwise imposed by law, see § 25-61-11.
Exemption of certain individual tax records from chapter, see § 27-3-77.
Exemption of certain appraisal records from chapter, see § 31-1-27.
Exemption of certain academic records from chapter, see § 37-11-51.
Exemption of certain archaeological records from chapter, see § 39-7-41.
Exemption of certain hospital records from chapter, see § 41-9-68.
Certain persons not entitled to access to records of bureau of vital statistics, see § 41-57-2.
Exemption of certain investigative and criminal justice records from chapter, see § 45-29-1.
Restrictions on examination of workers' compensation records, see § 71-3-66.
Exemption of certain licensure application and examination records from chapter, see § 73-52-1.
Exemption of certain commercial and financial records from chapter, see § 79-23-1.

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§ 25-61-17. Chapter not to affect legislature.

Nothing in this chapter shall be construed as denying the legislature the right to determine the rules of its own proceedings and to regulate public access to its records.

SOURCES: Laws, 1983, ch. 424, § 9, eff from and after July 1, 1983.

Annotations—

State freedom of information act requests: right to receive information in particular medium or format. 86 ALR4th 786.

TITLE 27
TAXATION AND FINANCE

Chapter 3. State Tax Commission
Chapter 7. Income Tax and Withholding
Chapter 31. Ad Valorem Taxes—General Exemptions
Chapter 65. Sales Tax
Chapter 101. Annual Reports by Departments of Government and State-Supported Institutions

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CHAPTER 3

State Tax Commission

SEC.
27-3-21. Library.

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§ 27-3-21. Library.

The chairman of the state tax commission shall accumulate a library on revenue laws, fiscal matters, and taxation, to be preserved in the office of the state tax commission and turned over to his successor, and may from time to time make publication for the dissemination of information on matters relating to taxation, the expense of which shall be paid out of the contingent fund of the commission.

SOURCES: Codes, 1942, § 9201; Laws, 1932, ch. 119.

CHAPTER 7

Income Tax and Withholding

ARTICLE 1

INCOME TAX

SEC.
27-7-15. Gross income defined.

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§ 27-7-15. Gross income defined.

[Until January 1, 1998, this section reads as follows:]

(1) For the purposes of this article, except as otherwise provided, the term "gross income" means and includes the income of a taxpayer derived from salaries, wages, fees or compensation for service, of whatever kind and in whatever form paid, including income from governmental agencies and subdivisions thereof; or from professions, vocations, trades, businesses, commerce or sales, or renting or dealing in property, or reacquired property; also from annuities, interest, rents, dividends, securities, insurance premiums, reinsurance premiums, considerations for supplemental insurance contracts, or the transaction of any business carried on for gain or profit, or gains, or profits, and income derived from any source whatever and in whatever form paid. The amount of all such items of income shall be included in the gross income for the taxable year in which received by the taxpayer. The amount by which an eligible employee's salary is reduced pursuant to a salary reduction agreement authorized under Section 25-17-5 shall be excluded from the term "gross income" within the meaning of this article.

(2) In determining gross income for the purpose of this section, the following, under regulations prescribed by the commissioner, shall be applicable:

(a) Dealers in property. Federal rules, regulations and revenue procedures shall be followed with respect to installment sales.

(b) Casual sales of property. Federal rules, regulations and revenue procedures shall be followed with respect to installment sales.

(i) The term "installment sale" means a disposition of property where at least one (1) payment is to be received after the close of the taxable year in which the disposition occurs.

(ii) The term "installment method" means a method under which the income recognized for any taxable year from the disposition is that proportion of the payments received in that year which the gross profit (realized or to be realized when payment is completed) bears to the total contract price.

(c) Reserves of insurance companies. In the case of insurance companies, any amounts in excess of the legally required reserves shall be included as gross income.

(d) Affiliated companies or persons. As regards sales, exchanges or payments for services from one to another of affiliated companies or persons or under other circumstances where the relation between the buyer and seller is such that gross proceeds from the sale or the value of the exchange or the payment for services are not indicative of the true value of the subject matter of the sale, exchange, or payment for services, the commissioner shall prescribe uniform and equitable rules for determining the true value of the gross income, gross sales, exchanges, or payment for services, or require consolidated returns of affiliates.

(e) Alimony and separate maintenance payments. The federal rules, regulations and revenue procedures in determining the deductibility and taxability of alimony payments shall be followed in this state.

(f) Reimbursement for expenses of moving. There shall be included in gross income (as compensation for

services) any amount received or accrued, directly or indirectly, by an individual as a payment for or reimbursement of expenses of moving from one residence to another residence which is attributable to employment or self-employment.

(3) In the case of taxpayers other than residents, gross income includes gross income from sources within this state.

(4) The words "gross income" do not include the following items of income which shall be exempt from taxation under this article:

(a) The proceeds of life insurance policies and contracts paid upon the death of the insured. However, the income from the proceeds of such policies or contracts shall be included in the gross income.

(b) The amount received by the insured as a return of premium or premiums paid by him under life insurance policies, endowment, or annuity contracts, either during the term or at maturity or upon surrender of the contract.

(c) The value of property acquired by gift, bequest, devise or descent, but the income from such property shall be included in the gross income.

(d) Interest upon the obligations of the United States or its possessions, or securities issued under the provisions of the Federal Farm Loan Act of July 17, 1916, or bonds issued by the War Finance Corporation, or obligations of the State of Mississippi or political subdivisions thereof.

(e) The amounts received through accident or health insurance as compensation for personal injuries or sickness, plus the amount of any damages received for such injuries or such sickness or injuries, or through the War Risk Insurance Act, or any law for the benefit or relief of injured or disabled members of the military or naval forces of the United States.

(f) Income received by any religious denomination or by any institution or trust for moral or mental improvements, religious, Bible, tract, charitable, benevolent, fraternal, missionary, hospital, infirmary, educational, scientific, literary, library, patriotic, historical, or cemetery purposes or for two (2) or more of such purposes, if such income be used exclusively for carrying out one or more of such purposes.

(g) Income received by a domestic corporation which is "taxable in another state" as this term is defined in this article, derived from business activity conducted outside this state. Domestic corporations taxable both within and without the state shall determine Mississippi income on the same basis as provided for foreign corporations under the provisions of this article.

(h) In case of insurance companies, there shall be excluded from gross income such portion of actual premiums received from an individual policyholder as is paid back or credited to or treated as an abatement of premiums of such policyholder within the taxable year.

(i) Income from dividends that has already borne a tax as dividend income under the provisions of this article, when such dividends may be specifically identified in the possession of the recipient.

(j) Amounts paid by the United States to a person as added compensation for hazardous duty pay as a member of the Armed Forces of the United States in a combat zone designated by Executive Order of the President of the United States.

(k) Amounts received as retirement allowances, pensions, annuities, or optional retirement allowances paid under the Federal Social Security Act, the Railroad Retirement Act, the Federal Civil Service Retirement Act, or any other retirement system of the United States government, retirement allowances paid under the Mississippi Public Employees' Retirement System, Mississippi Highway Safety Patrol Retirement System or any other retirement system of the State of Mississippi or any political subdivision thereof. The exemption allowed under this paragraph (k) shall be available to the spouse or other beneficiary at the death of the primary retiree.

(l) Amounts received as retirement allowances, pensions, annuities, or optional retirement allowances paid by any public or governmental retirement system not designated in subsection (k) or any private retirement system or plan of which the recipient was a member at any time during the period of his employment. The exemption allowed under this paragraph (l) shall be available to the spouse or other beneficiary at the death of the primary retiree.

(m) Compensation not to exceed the aggregate sum of Five Thousand Dollars ($5,000.00) for any taxable

year received by a member of the National Guard or Reserve Forces of the United States as payment for inactive duty training, active duty training and state active duty.

(n) Compensation received for active service as a member below the grade of commissioned officer and so much of the compensation as does not exceed the aggregate sum of Five Hundred Dollars ($500.00) per month received for active service as a commissioned officer in the Armed Forces of the United States for any month during any part of which such members of the armed forces (i) served in a combat zone as designated by Executive Order of the President of the United States; or (ii) was hospitalized as a result of wounds, disease or injury incurred while serving in such combat zone.

(o) The proceeds received from federal and state forestry incentives programs.

(p) The amount representing the difference between the increase of gross income derived from sales for export outside the United States as compared to the preceding tax year wherein gross income from export sales was highest, and the net increase in expenses attributable to such increased exports. In the absence of direct accounting the ratio of net profits to total sales may be applied to the increase in export sales. This item (p) shall only apply to businesses located in this state engaging in the international export of Mississippi goods and services. Such goods or services shall have at least fifty percent (50%) of value added at a location in Mississippi.

(q) Amounts paid by the federal government for the construction of soil conservation systems on highly erodible land as required by a conservation plan adopted pursuant to Public Law 101-624, Title XIV (16 U.S.C. 3801 through 3813).

(r) The amount deposited in a medical savings account, and any interest accrued thereon, that is a part of a medical savings account program as specified in the Medical Savings Account Act under Sections 71-9-1 through 71-9-9; provided, however, that any amount withdrawn from such account for purposes other than paying eligible medical expense or to procure health coverage, shall be included in gross income.

(5) Prisoners of war, missing in action-taxable status.

(a) Members of the Armed Forces. Gross income does not include compensation received for active service as a member of the Armed Forces of the United States for any month during any part of which such member is in a missing status, as defined in paragraph (d) of this subsection, during the Vietnam Conflict as a result of such conflict.

(b) Civilian employees. Gross income does not include compensation received for active service as an employee for any month during any part of which such employee is in a missing status during the Vietnam Conflict as a result of such conflict.

(c) Period of conflict. For the purpose of this subsection, the Vietnam Conflict began February 28, 1961, and ends on the date designated by the President by Executive Order as the date of the termination of combatant activities in Vietnam. For the purpose of this subsection, an individual is in a missing status as a result of the Vietnam Conflict if immediately before such status began he was performing service in Vietnam or was performing service in Southeast Asia in direct support of military operations in Vietnam. "Southeast Asia" as used in this paragraph is defined to include Cambodia, Laos, Thailand and waters adjacent thereto.

(d) "Missing status" means the status of an employee or member of the armed forces who is in active service and is officially carried or determined to be absent in a status of (i) missing; (ii) missing in action; (iii) interned in a foreign country; (iv) captured, beleaguered or besieged by a hostile force; or (v) detained in a foreign country against his will; but does not include the status of an employee or member of the armed forces for a period during which he is officially determined to be absent from his post of duty without authority.

(e) "Active service" means active federal service by an employee or member of the Armed Forces of the United States in an active duty status.

(f) "Employee" means one who is a citizen or national of the United States or an alien admitted to the United States for permanent residence and is a resident of the State of Mississippi and is employed in or under a federal executive agency or department of the armed forces.

(g) "Compensation" means (i) basic pay; (ii) special pay; (iii) incentive pay; (iv) basic allowance for quarters; (v) basic allowance for subsistence; and (vi) station per diem allowances for not more than ninety (90) days.

(h) If refund or credit of any overpayment of tax for any taxable year resulting from the application of subsection (5) of this section is prevented by the operation of any law or rule of law, such refund or credit of such overpayment of tax may, nevertheless, be made or allowed if claim therefor is filed with the State Tax Commission within three (3) years after the date of the enactment of this subsection.

(i) The provisions of this subsection shall be effective for taxable years ending on or after February 28, 1961.

(6) A shareholder of an S corporation, as defined in Section 27-8-3(1)(g), shall take into account the income, loss, deduction or credit of the S corporation only to the extent provided in Section 27-8-7(2).

[From and after January 1, 1998, this section reads as follows:]

(1) For the purposes of this article, except as otherwise provided, the term "gross income" means and includes the income of a taxpayer derived from salaries, wages, fees or compensation for service, of whatever kind and in whatever form paid, including income from governmental agencies and subdivisions thereof; or from professions, vocations, trades, businesses, commerce or sales, or renting or dealing in property, or reacquired property; also from annuities, interest, rents, dividends, securities, insurance premiums, reinsurance premiums, considerations for supplemental insurance contracts, or the transaction of any business carried on for gain or profit, or gains, or profits, and income derived from any source whatever and in whatever form paid. The amount of all such items of income shall be included in the gross income for the taxable year in which received by the taxpayer. The amount by which an eligible employee's salary is reduced pursuant to a salary reduction agreement authorized under Section 25-17-5 shall be excluded from the term "gross income" within the meaning of this article.

(2) In determining gross income for the purpose of this section, the following, under regulations prescribed by the commissioner, shall be applicable:

(a) Dealers in property. Federal rules, regulations and revenue procedures shall be followed with respect to installment sales.

(b) Casual sales of property. Federal rules, regulations and revenue procedures shall be followed with respect to installment sales.

(i) The term "installment sale" means a disposition of property where at least one (1) payment is to be received after the close of the taxable year in which the disposition occurs.

(ii) The term "installment method" means a method under which the income recognized for any taxable year from the disposition is that proportion of the payments received in that year which the gross profit (realized or to be realized when payment is completed) bears to the total contract price.

(c) Reserves of insurance companies. In the case of insurance companies, any amounts in excess of the legally required reserves shall be included as gross income.

(d) Affiliated companies or persons. As regards sales, exchanges or payments for services from one to another of affiliated companies or persons or under other circumstances where the relation between the buyer and seller is such that gross proceeds from the sale or the value of the exchange or the payment for services are not indicative of the true value of the subject matter of the sale, exchange, or payment for services, the commissioner shall prescribe uniform and equitable rules for determining the true value of the gross income, gross sales, exchanges, or payment for services, or require consolidated returns of affiliates.

(e) Alimony and separate maintenance payments. The federal rules, regulations and revenue procedures in determining the deductibility and taxability of alimony payments shall be followed in this state.

(f) Reimbursement for expenses of moving. There shall be included in gross income (as compensation for services) any amount received or accrued, directly or indirectly, by an individual as a payment for or reimbursement of expenses of moving from one residence to another residence which is attributable to employment or self-employment.

(3) In the case of taxpayers other than residents, gross income includes gross income from sources within this state.

(4) The words "gross income" do not include the following items of income which shall be exempt from taxation under this article:

(a) The proceeds of life insurance policies and contracts paid upon the death of the insured. However, the income from the proceeds of such policies or contracts shall be included in the gross income.

(b) The amount received by the insured as a return of premium or premiums paid by him under life insurance policies, endowment, or annuity contracts, either during the term or at maturity or upon surrender of the contract.

(c) The value of property acquired by gift, bequest, devise or descent, but the income from such property shall be included in the gross income.

(d) Interest upon the obligations of the United States or its possessions, or securities issued under the provisions of the Federal Farm Loan Act of July 17, 1916, or bonds issued by the War Finance Corporation, or obligations of the State of Mississippi or political subdivisions thereof.

(e) The amounts received through accident or health insurance as compensation for personal injuries or sickness, plus the amount of any damages received for such injuries or such sickness or injuries, or through the War Risk Insurance Act, or any law for the benefit or relief of injured or disabled members of the military or naval forces of the United States.

(f) Income received by any religious denomination or by any institution or trust for moral or mental improvements, religious, Bible, tract, charitable, benevolent, fraternal, missionary, hospital, infirmary, educational, scientific, literary, library, patriotic, historical, or cemetery purposes or for two (2) or more of such purposes, if such income be used exclusively for carrying out one or more of such purposes.

(g) Income received by a domestic corporation which is "taxable in another state" as this term is defined in this article, derived from business activity conducted outside this state. Domestic corporations taxable both within and without the state shall determine Mississippi income on the same basis as provided for foreign corporations under the provisions of this article.

(h) In case of insurance companies, there shall be excluded from gross income such portion of actual premiums received from an individual policyholder as is paid back or credited to or treated as an abatement of premiums of such policyholder within the taxable year.

(i) Income from dividends that has already borne a tax as dividend income under the provisions of this article, when such dividends may be specifically identified in the possession of the recipient.

(j) Amounts paid by the United States to a person as added compensation for hazardous duty pay as a member of the Armed Forces of the United States in a combat zone designated by Executive Order of the President of the United States.

(k) Amounts received as retirement allowances, pensions, annuities, or optional retirement allowances paid under the Federal Social Security Act, the Railroad Retirement Act, the Federal Civil Service Retirement Act, or any other retirement system of the United States government, retirement allowances paid under the Mississippi Public Employees' Retirement System, Mississippi Highway Safety Patrol Retirement System or any other retirement system of the State of Mississippi or any political subdivision thereof. The exemption allowed under this paragraph (k) shall be available to the spouse or other beneficiary at the death of the primary retiree.

(l) Amounts received as retirement allowances, pensions, annuities, or optional retirement allowances paid by any public or governmental retirement system not designated in subsection (k) or any private retirement system or plan of which the recipient was a member at any time during the period of his employment. The exemption allowed under this paragraph (l) shall be available to the spouse or other beneficiary at the death of the primary retiree.

(m) Compensation not to exceed the aggregate sum of Five Thousand Dollars ($5,000.00) for any taxable year received by a member of the National Guard or Reserve Forces of the United States as payment for inactive duty training, active duty training and state active duty.

(n) Compensation received for active service as a member below the grade of commissioned officer and so much of the compensation as does not exceed the aggregate sum of Five Hundred Dollars ($500.00) per month received for active service as a commissioned officer in the Armed Forces of the United States for any month during any part of which such members of the armed forces (i) served in a combat zone as designated by Executive Order of the President of the United States; or (ii) was hospitalized as a result of wounds, disease or injury incurred while serving in such combat zone.

(o) The proceeds received from federal and state forestry incentives programs.

(p) The amount representing the difference between the increase of gross income derived from sales for export outside the United States as compared to the preceding tax year wherein gross income from export sales was highest, and the net increase in expenses attributable to such increased exports. In the absence of direct accounting the ratio of net profits to total sales may be applied to the increase in export sales. This item (p) shall only apply to businesses located in this state engaging in the international export of Mississippi goods and services. Such goods or services shall have at least fifty percent (50%) of value added at a location in Mississippi.

(q) Amounts paid by the federal government for the construction of soil conservation systems on highly erodible land as required by a conservation plan adopted pursuant to Public Law 101-624, Title XIV (16 U.S.C. 3801 through 3813).

(5) Prisoners of war, missing in action-taxable status.

(a) Members of the Armed Forces. Gross income does not include compensation received for active service as a member of the Armed Forces of the United States for any month during any part of which such member is in a missing status, as defined in paragraph (d) of this subsection, during the Vietnam Conflict as a result of such conflict.

(b) Civilian employees. Gross income does not include compensation received for active service as an employee for any month during any part of which such employee is in a missing status during the Vietnam Conflict as a result of such conflict.

(c) Period of conflict. For the purpose of this subsection, the Vietnam Conflict began February 28, 1961, and ends on the date designated by the President by Executive Order as the date of the termination of combatant activities in Vietnam. For the purpose of this subsection, an individual is in a missing status as a result of the Vietnam Conflict if immediately before such status began he was performing service in Vietnam or was performing service in Southeast Asia in direct support of military operations in Vietnam. "Southeast Asia" as used in this paragraph is defined to include Cambodia, Laos, Thailand and waters adjacent thereto.

(d) "Missing status" means the status of an employee or member of the armed forces who is in active service and is officially carried or determined to be absent in a status of (i) missing; (ii) missing in action; (iii) interned in a foreign country; (iv) captured, beleaguered or besieged by a hostile force; or (v) detained in a foreign country against his will; but does not include the status of an employee or member of the armed forces for a period during which he is officially determined to be absent from his post of duty without authority.

(e) "Active service" means active federal service by an employee or member of the Armed Forces of the United States in an active duty status.

(f) "Employee" means one who is a citizen or national of the United States or an alien admitted to the United States for permanent residence and is a resident of the State of Mississippi and is employed in or under a federal executive agency or department of the armed forces.

(g) "Compensation" means (i) basic pay; (ii) special pay; (iii) incentive pay; (iv) basic allowance for quarters; (v) basic allowance for subsistence; and (vi) station per diem allowances for not more than ninety (90) days.

(h) If refund or credit of any overpayment of tax for any taxable year resulting from the application of subsection (5) of this section is prevented by the operation of any law or rule of law, such refund or credit of such overpayment of tax may, nevertheless, be made or allowed if claim therefor is filed with the State Tax Commission within three (3) years after the date of the enactment of this subsection.

(i) The provisions of this subsection shall be effective for taxable years ending on or after February 28, 1961.

(6) A shareholder of an S corporation, as defined in Section 27-8-3(1)(g), shall take into account the income, loss, deduction or credit of the S corporation only to the extent provided in Section 27-8-7(2).

SOURCES: Codes, 1942, § 9220-08; Laws, 1934, ch. 120; 1936, ch. 151; 1940, ch. 123; 1942, chs. 125, 129; 1944, ch. 122; 1948, ch. 464, § 1; 1952, ch. 402, § 7; 1954, ch. 366; 1966, ch. 628, § 2; 1973, ch. 504, § 1; 1978, ch. 475, § 1; 1982, ch. 489, § 1; 1984, ch. 393, § 8; 1986, ch. 393, § 1; 1986, ch. 513, § 8; brought forward 1987, ch. 345, § 8; 1987, ch. 423, § 1; 1990, ch. 523, § 5; 1993, ch. 377, § 1; 1993, ch. 456, § 13; 1993, ch. 523, § 1; 1994, ch. 468, § 6, eff from and after January 1, 1994.

Editor's Note—

Laws, 1982, ch. 489, § 14, effective from and after January 1, 1982, provides as follows:

"SECTION 14. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 7, 13 and 21, Mississippi Code of 1972, prior to the applicable effective date of the sections of this act, whether such assessments, appeals, suits, claims or actions shall have been begun before the applicable effective date of the sections of this act, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to the applicable effective date of the sections of this act, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws, 1987, ch. 423, § 5, provides:

"SECTION 5. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax laws prior to the date on which this act becomes effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which this act becomes effective or shall thereafter be begun; and the provisions of the income tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and execution of any warrant under such laws prior to the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws, 1990, ch. 523, § 8, effective from and after January 1, 1990, provides as follows:

"SECTION 8. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws, 1993, ch. 523, § 6, effective from and after January 1, 1994, provides as follows:

"SECTION 6. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross references—

Taxation of annuity contracts under optional retirement program for employees of state institutions of higher learning, see § 25-11-419.

Alimony payments as adjustments to gross income, see § 27-7-18.

Calculation of gross income of S corporation shareholders, see § 27-8-7.

Treatment of stock or money distributions by S corporations to resident shareholders, see § 27-8-17.

Exemption of airport income from tax, see §§ 61-3-77, 61-5-43.

Principal contributed and the interest earned on medical savings account excluded from taxable income under this section, see § 71-9-5.

Federal Aspects—

Federal Civil Service Retirement Act, see 5 USCS §§ 8331 et seq.

Federal Social Security Act, see 42 USCS §§ 301 et seq.

War Risk Insurance Act, see 46 USCS §§ 1281 et seq.

Research and Practice References—

71 Am Jur 2d, State and Local Taxation.

85 CJS, Taxation §§ 1096 et seq.

Annotations—

Income taxes: taxpayer's reliance on doctrine of constructive receipt to defeat assertion of tax in later year. 7 ALR2d 735.

Income of subsidiary as taxable to it or to parent corporation. 10 ALR2d 576.

When is corporation, community chest, fund, foundation, or club "organized and operated exclusively" for exempt purposes under Internal Revenue Code. 69 ALR2d 871.

Payment of premiums by corporation on policy on life of stockholder as taxable income to the insured. 73 ALR2d 708.

Federal income tax charitable deductions: property fair-market-value determinations. 90 ALR Fed 402.

Premiums paid by employer for insurance or annuity payable to employee as taxable income of latter. 7 ALR2d 766.

Income tax: cancelation of debt upon payment of less than amount due, or purchase by debtor of own obligation at a discount, as creating taxable income. 7 ALR2d 871.

Tips as taxable income. 10 ALR2d 191.

Income tax: market value as ascribable to agreement to pay a life annuity to another for purpose of determining capital gain or loss. 12 ALR2d 589.

Income tax consequences to shareholder of dividend in kind. 56 ALR2d 474.

Exclusion of meals and lodging from gross income under "convenience of the employer" rule. 84 ALR2d 1215.

State tax on trust income as affected by foreign elements. 5 ALR3d 606.

JUDICIAL DECISIONS

1. In general
2. Particular applications

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1. In general

"Gross income," imports an actual gain and indicates an inal crease of wealth in hand. Mississippi State Tax Com. v Hogg (1960) 239 Miss 597, 124 So 2d 300.

A taxing statute will be strictly construed against the taxing power and in favor of the taxpayer, and all doubts as to whether or not a tax has been imposed must be resolved in favor of the taxpayer. State v Johnson (1960) 238 Miss 211, 118 So 2d 308.

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The word "property" as used in subsection (a) of this section, applying where property is sold upon the deferred payment plan, is not limited to tangible property. State v Johnson (1960) 238 Miss 211, 118 So 2d 308.

2. Particular applications

A pro rata distribution to stockholders of a corporation of stock in another corporation acquired by it in exchange for assets, does not constitute taxable income. Mississippi State Tax Com. v Hogg (1960) 239 Miss 597, 124 So 2d 300.

Where a taxpayer, who had received 10 instalment promissory notes representing part of the purchase price from him of certain shares of stock, exercised his option to pay income tax on gains received in the years in which the deferred payments were received by him, and subsequently taxpayer transferred these notes in a bona fide transaction to a merchandise corporation in which he was a principal stockholder, for purpose of enabling indorsee to use notes as collateral in its business, with the taxpayer receiving in return, and as consideration for the transfer, substantially identical notes of the corporation payable to him in instalments, taxpayer retained the privilege to report his taxable gain under the new instalment notes on the deferred payment basis. State v Johnson (1960) 238 Miss 211, 118 So 2d 308.

Where the entire business of a Mississippi corporation consisted of assembling component parts to be used by the New Jersey corporation which owned all of its outstanding stock, the statutory basis for income taxes of the Mississippi corporation was its gross income, and its gross income was the true value of the services it performed for the New Jersey corporation. The Tax Commission could not lawfully substitute for the statutory method of determining gross income an apportionment formula that included the income of the New Jersey corporation, and that portion of a tax regulation authorizing the commissioner to consolidate the income of a resident corporation with that of an affiliated foreign corporation and apply an apportionment formula for income tax purposes is void. Universal Mfg. Corp. v Brady (1975, Miss) 320 So 2d 784.

Where an instalment sale of real estate is made, instalments of trust deed indebtedness assumed by the purchaser maturing subsequent to the year of sale are not to be considered in determining whether the initial payment exceeds 30 percent. State Tax Com. v Edmondson (1967, Miss) 196 So 2d 873.

To determine whether the initial payment received in connection with an instalment sale of real estate exceeds 30 percent, only the sum paid in cash plus any trust deed indebtedness assumed by the purchaser which matures in the year of the sale are to be included. State Tax Com. v Edmondson (1967, Miss) 196 So 2d 873.

UNDER FORMER LAW

JUDICIAL DECISIONS

1. In general
2. What constitutes taxable income
3. Exemptions

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1. In general

The subsequent amendment of income tax statute could not be considered in determining whether under original statute gross income included profits on sales of property not regularly employed in conduct of regular trade or business, where original statute was not ambiguous. Virden v State Tax Com. (1938) 180 Miss 467, 177 So 784.

An administrative interpretation of income tax statute to effect that it did not impose tax on gains realized from capital transactions could not be considered in determining whether gross income within statute included profits on sales of property not regularly employed in conduct of regular trade or business, where the administrative interpretation was in conflict with statute and the commission making the interpretation had not adhered to such interpretation. Virden v State Tax Com. (1938) 180 Miss 467, 177 So 784.

Including income from sources outside the state in determining a citizen's taxable income while excluding it in determining the taxable income of domestic corporations does not deny to a citizen the equal protection of the laws where there is nothing to negative the possible existence of just grounds of difference and it appears that the state has adopted generally a policy of avoiding double taxation of the same economic interest in corporate income by taxing either income of the corporation or dividends of its stockholders, but not both, and in the case of corporate income and dividends attributable to business done outside the state and received by stockholders of domestic corporations, the stockholders are taxed. Lawrence v State Tax Com. (1932) 286 US 276, 76 L Ed 1102, 52 S Ct 556, 87 ALR 374.

2. What constitutes taxable income

Election by state to tax the shares of national banks according to their value as permitted under Act of Congress (12 USCA § 548) exhausted its right to tax such bank, or its shares, or the income therefrom; and, accordingly, the state legislature did not intend, under the Income Tax Act of 1934, to tax the income dividends derived from such shares. Mississippi State Tax Com. v Brown (1940) 188 Miss 483, 193 So 794, 127 ALR 919, sugg of error overr 188 Miss 516, 195 So 465, 127 ALR 933.

This income tax law will not be construed as taxing income from national bank shares where it was enacted at a time when the view prevailing in the Supreme Court of the United States was that instrumentalities of the United States could not be taxed by the state on income. Mississippi State Tax Com. v Brown (1940) 188 Miss 483, 193 So 794, 127 ALR 919, sugg of error overr 188 Miss 516, 195 So 465, 127 ALR 933.

Refunds or payments by a ginning company to its patrons, under an agreement that if they would pay its charges for ginning their cotton and accept payment for their cotton seed at prices offered by it therefor, it would thereafter make an equitable adjustment of such prices and charges and pay them additional money for the cotton seed purchased from them, construed by both parties to be an agreement by the ginning company to do for all its patrons what under its charter it was required to do for its patrons who owned its corporate stock, were not a part of the ginning company's gross income and therefore included in the taxable income of the corporation. State v Morgan Gin Co. (1939) 186 Miss 66, 189 So 817.

Money received in a business transaction which the taxpayer has no right to retain but must return is not income within the purview of this section. [Code 1942, § 9227], since his income from the business is neither increased nor diminished thereby. State v Morgan Gin Co. (1939) 186 Miss 66, 189 So 817.

A taxpayer's "gross income" included profits on sales of property not regularly employed in conduct of regular trade or business where income tax statute was broad enough to include profits on sales of all property in gross income, notwithstanding statute contained provisions for determining gains realized or losses sustained from disposition of assets employed in conduct of regular trade or business but not for determining gains or losses sustained on sales of property not employed in trade or business, since provisions for determining gains or losses were not in conflict with legislative intent clearly expressed in preceding provisions that

profits on sales of all property should be included in gross income. Virden v State Tax Com. (1938) 180 Miss 467, 177 So 784.

The state income tax statute would not be inoperative against rentals of land received under Agricultural Adjustment Act, as taxing government instrumentality, since Agricultural Adjustment Act has been declared unconstitutional and void. Chapman v State (1937) 179 Miss 507, 176 So 391.

One who retained rental of land received under Agricultural Adjustment Act, after discovery that receipt thereof was illegal, was subject to state income tax with respect to such rental, against contention that he was liable to suit to recover it. Chapman v State (1937) 179 Miss 507, 176 So 391.

Increase in value of property, accruing over period of years, may be taxed as "income" of year in which it is converted into money or other property. Fernwood Lumber Co. v Mississippi State Tax Com. (1933) 167 Miss 273, 149 So 727.

Income earned by citizen and resident of state, whether earned within or without state, is subject to tax. Lawrence v Mississippi State Tax Com. (1931) 162 Miss 338, 137 So 503, affd 286 US 276, 76 L Ed 1102, 52 S Ct 556, 87 ALR 374.

"Income" is gain derived from capital, from labor, or from both combined. Hattiesburg Grocery Co. v Robertson (1921) 126 Miss 34, 88 So 4, 25 ALR 748, sugg of error overr 126 Miss 655, 89 So 369, 25 ALR 755, error dismd 260 US 710, 67 L Ed 475, 43 S Ct 249.

3. Exemptions

Rental of land received under Agricultural Adjustment Act was a "gain" or "income" from land and not "other compensation received from United States government" so as to be exempt from state income tax within terms of former statute exempting salaries, wages and other compensation received from the United States government. Chapman v State (1937) 179 Miss 507, 176 So 391.

Rental of land received under Agricultural Adjustment Act was not exempt from state income tax as a "gift," since gift by government must be authorized by valid Act of Congress. Chapman v State (1937) 179 Miss 507, 176 So 391.

The salary of a vice-president of a federal land bank is not exempt from state income tax, since federal land banks, though federal instrumentalities, were established primarily to make loans on farm lands, are operated in part for profit, and private investors may own their stock. Parker v Mississippi State Tax Com. (1937) 178 Miss 680, 174 So 567, cert den 302 US 742, 82 L Ed 574, 58 S Ct 144.

That profit or gain is evidenced by something which is property taxable as such does not render it exempt from taxation as "income." Fernwood Lumber Co. v Mississippi State Tax Com. (1933) 167 Miss 273, 149 So 727.

CHAPTER 31

Ad Valorem Taxes—General Exemptions

IN GENERAL

SEC.
27-31-1. Exempt property.
27-31-21. Public school libraries and buildings.

§ 27-31-1. Exempt property.

The following shall be exempt from taxation:

(a) All cemeteries used exclusively for burial purposes.

(b) All property, real or personal, belonging to the State of Mississippi or any of its political subdivisions, except property of a municipality not being used for a proper municipal purpose and located outside the county or counties in which such municipality is located. A proper municipal purpose within the meaning of this section shall be any authorized governmental or corporate function of a municipality.

(c) All property, real or personal, owned by units of the Mississippi National Guard, or title to which is vested in trustees for the benefit of any unit of the Mississippi National Guard; provided such property is used exclusively for such unit, or for public purposes, and not for profit.

(d) All property, real or personal, belonging to any religious society, or ecclesiastical body, or any congregation thereof, or to any charitable society, or to any historical or patriotic association or society, or to any garden or pilgrimage club or association and used exclusively for such society or association and not for profit; not exceeding, however, the amount of land which such association or society may own as provided in Section 79-11-33. All property, real or personal, belonging to any rural waterworks system or rural sewage disposal system incorporated under the provisions of Section 79-11-1. All property, real or personal, belonging to any college or institution for the education of youths, used directly and exclusively for such purposes, provided that no such college or institution for the education of youths shall have exempt from taxation more than six hundred forty (640) acres of land; provided, however, this exemption shall not apply to commercial schools and colleges or trade institutions or schools where the profits of same inure to individuals, associations or corporations. All property, real or personal, belonging to an individual, institution or corporation and used for the operation of a grammar school, junior high school, high school or military school. All property, real or personal, owned and occupied by a fraternal and benevolent organization, when used by such organization, and from which no rentals or other profits accrue to the organization, but any part rented or from which revenue is received shall be taxed.

(e) All property, real or personal, held and occupied by trustees of public schools, and school lands of the respective townships for the use of public schools, and all property kept in storage for the convenience and benefit of the State of Mississippi in warehouses owned or leased by the State of Mississippi, wherein said property is to be sold by the Alcoholic Beverage Control Division of the State Tax Commission of the State of Mississippi.

(f) All property, real or personal, whether belonging to religious or charitable or benevolent organizations, which is used for hospital purposes, and nurses' homes where a part thereof, and which maintain one or more charity wards that are for charity patients, and where all the income from said hospitals and nurses' homes is used entirely for the purposes thereof and no part of the same for profit.

(g) The wearing apparel of every person; and also jewelry and watches kept by the owner for personal use to the extent of One Hundred Dollars ($100.00) in value for each owner.

(h) Provisions on hand for family consumption.

(i) All farm products grown in this state for a period of two (2) years after they are harvested, when in the possession of or the title to which is in the producer, except the tax of one-fifth of one percent (1/5 of 1%) per pound on lint cotton now levied by the Board of Commissioners of the Mississippi Levee District; and lint cotton for five (5) years, and cottonseed, soybeans, oats, rice and wheat for one (1) year regardless of ownership.

(j) All guns and pistols kept by the owner for private use.

(k) All poultry in the hands of the producer.

(l) Household furniture, including all articles kept in the home by the owner for his own personal or family use; but this shall not apply to hotels, rooming houses or rented or leased apartments.

(m) All cattle and oxen.

(n) All sheep, goats and hogs.

(o) All horses, mules and asses.

(p) Farming tools, implements and machinery, when used exclusively in the cultivation or harvesting of crops or timber.

(q) All property of agricultural and mechanical associations and fairs used for promoting their objects, and where no part of the proceeds is used for profit.

(r) The libraries of all persons.

(s) All pictures and works of art, not kept for or offered for sale as merchandise.

(t) The tools of any mechanic necessary for carrying on his trade.

(u) All state, county, municipal, levee, drainage and all school bonds or other governmental obligations, and all bonds and/or evidences of debts issued by any church or church organization in this state, and all notes and evidences of indebtedness which bear a rate of interest not greater than the maximum rate per annum applicable under the law; and all money loaned at a rate of interest not exceeding the maximum rate per annum applicable under the law; and all stock in or bonds of foreign corporations or associations shall be exempt from all ad valorem taxes.

(v) All lands and other property situated or located between the Mississippi River and the levee shall be exempt from the payment of any and all road taxes levied or assessed under any road laws of this state.

(w) Any and all money on deposit in either national banks, state banks or trust companies, on open account, savings account or time deposit.

(x) All wagons, carts, drays, carriages and other horse drawn vehicles, kept for the use of the owner.

(y)(1) Boats, seines and fishing equipment used in fishing and shrimping operations and in the taking or catching of oysters.

(2) All towboats, tugboats and barges documented under the laws of the United States.

(z) All materials used in the construction and/or conversion of vessels in this state; vessels while under construction and/or conversion; vessels while in the possession of the manufacturer, builder or converter, for a period of twelve (12) months after completion of construction and/or conversion, and as used herein the term "vessel" shall include ships, offshore drilling equipment, dry docks, boats and barges.

(aa) Sixty-six and two-thirds percent (66-2/3%) of nuclear fuel and reprocessed, recycled or residual nuclear fuel by-products, fissionable or otherwise, used or to be used in generation of electricity by persons defined as public utilities in Section 77-3-3.

(bb) All growing nursery stock.

(cc) A semitrailer used in interstate commerce.

(dd) All property, real or personal, used exclusively for the housing of and provision of services to elderly persons, disabled persons, mentally impaired persons or as a nursing home, which is owned, operated and managed by a not-for-profit corporation, qualified under Section 501(c)(3) of the Internal Revenue Code, whose membership or governing body is appointed or confirmed by a religious society or ecclesiastical body or any congregation thereof.

(ee) All vessels while in the hands of bona fide dealers as merchandise and which are not being oper-

ated upon the waters of this state shall be exempt from ad valorem taxes. As used in this paragraph the terms "vessel" and "waters of this state" shall have the meaning ascribed to such terms in Section 59-21-3.

SOURCES: Codes, Hutchinson's 1848, ch. 8, art. 2 (1); 1857, ch. 3, art. 11; 1871, § 1662; 1880, § 468; 1892, § 3744; 1906, § 4251; Hemingway's 1917, § 6878; 1930, § 3108; 1942, § 9697; Laws, 1928, ch. 185; 1932, chs. 137, 289; 1934, ch. 157; 1935, ch. 23; 1938, ch. 128; 1946, ch. 234, § 1; 1952, ch. 424; 1954, ch. 384; 1958, ch. 564; 1960, chs. 464, 465; 1966, ch. 639, § 1; 1968, ch. 582, § 1; 1971, ch. 412, § 1; 1972, ch. 448, § 1; 1978, ch. 410, § 4; 1980, ch. 479; 1984, ch. 456, § 1; 1986, ch. 403, § 1; 1988, ch. 506, § 2; 1990, ch. 463, § 1; 1992, ch. 418, § 1; 1993, ch. 604, § 1, eff from and after October 1, 1993.

Editor's Note—

Laws, 1986, ch. 403, § 2, provides as follows:

"SECTION 2. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws prior to the date on which this act becomes effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which this act becomes effective or shall thereafter be begun; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and executing of any warrant under said laws prior to the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws, 1990, ch. 463, § 2, provides as follows:

"Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such law."

Laws, 1992, ch. 418, § 2, effective from and after July 1, 1992, provides as follows:

"SECTION 2. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws, 1993, ch. 604, § 4, effective October 1, 1993, provides as follows:

"SECTION 4. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross references—

Exemption of land acquired by United States, see § 3-5-7.

Tax exemption for property of county or regional railroad authorities, see § 19-29-39.

Land acquired by municipality at tax sales, see §§ 21-33-71, 21-33-73, 21-33-75.

Exemption of leasehold interests in any personal or real property owned by state of Mississippi, counties, districts, municipalities, or political subdivisions from retroactive assessment of ad valorem tax due to omission in prior years, see §§ 21-33-55, 27-35-155.

Exemption of property constructed, renovated, or improved in the central business district, see § 21-33-91.

Homestead exemption for property of a fraternal or benevolent organization, see §§ 27-33-17, 27-33-19.

Severance tax exemptions from ad valorem taxes, see § 27-25-27 (timber and timber products); § 27-25-307 (salt); § 27-25-523 (oil severed or produced in state); § 27-25-721 (natural gas).

Exemption of public library and school buildings, see § 27-31-21.

Exemption of equipment used to facilitate transportation of carbon dioxide in connection with enhanced oil recovery projects, see § 27-31-102.

Homestead exemption, see §§ 27-33-1 et seq.

Exemption from tax on corporations and joint stock companies, see § 27-35-31.

Tax exemption of loans relating to assignment of tax lien, see § 27-47-29.

Exemptions under the motor vehicle ad valorem tax law, see § 27-51-41.

Exemptions under mobile homes ad valorem tax law, see § 27-53-27.

Exemption of university lands, see § 37-115-3.

Exemption of housing authorities property, see § 43-33-37.

Tax exemption for property and income of the Wavelands Regional Wastewater Management District, see § 49-17-197.

Tax exemption relating to property, income and bonds of the Mississippi Gulf Coast Regional Wastewater Authority, see § 49-17-337.

Exemption of district bonds for conservation of water resources, see §§ 51-9-157, 51-15-155.

Exemption of drainage district bonds, see § 51-31-113.

Exemption of state ports and harbors bonds, see § 59-5-43.

Exemption of airport property and income, see §§ 61-3-77, 61-5-43.

Exemption of employee trust plan funds, see § 71-1-43.

Exemption of small business investment company notes, etc., see § 79-7-5.

Exemption of agricultural products of co-operative associations, see § 79-19-53.

Exemption of farmers' and agricultural credit associations, see §§ 81-15-29, 81-17-25.

Exemption of nonprofit dental service corporations, see § 83-43-33.

Property exempt from execution or attachment, see §§ 85-3-1 et seq.

Federal Aspects—

Organizations exempt from federal tax on corporations under Section 501(c)(3) of the Internal Revenue Code, see 26 USCS § 501(c)(3).

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Research and Practice References—

71 Am Jur 2d, State and Local Taxation §§ 332 et seq.
84 CJS, Taxation §§ 242 et seq.
22 Am Jur Pl & Pr Forms (Rev), State and Local Taxation, Forms 111 et seq. (exemptions from taxation).
Historic Preservation of the Zoning Power: A Mississippi Perspective. 50 Miss L J 533, September 1979.
1979 Mississippi Supreme Court Review: Miscellaneous. 50 Miss L J 833, December 1979.

Annotations—

Legislative power to exempt from taxation property, purposes, or uses additional to those specified in constitution. 61 ALR2d 1031.
Exemption from taxation of college fraternity or sorority house. 66 ALR2d 904.
Property used as dining rooms or restaurants as within tax exemptions extended to property of religious, educational, charitable, or hospital organizations. 72 ALR2d 521.
Church parking lots as entitled to tax exemptions. 75 ALR2d 1106.
Tax exemption of property used by fraternal or benevolent association for clubhouse or similar purposes. 39 ALR3d 640.
Nursing homes as exempt from property taxation. 45 ALR3d 610.
Validity of statute or ordinance giving property tax exemption or favorable property tax rate to older persons. 45 ALR3d 1147.
Construction of statute or ordinance giving property tax exemption or favorable property tax rate to older persons. 45 ALR3d 1153.
Taxation: Exemption of parsonage or residence of minister, priest, rabbi, or other church personnel. 55 ALR3d 356.
Property tax: Exemption of property leased by and used for purposes of otherwise tax-exempt body. 55 ALR3d 430.
Tax exemption of property of educational body as extending to property used by personnel as living quarters. 55 ALR3d 485.
What are educational institutions or schools within state property tax exemption provisions. 34 ALR4th 698.
Exemption of public golf courses from local property taxes. 41 ALR4th 963.
Exemption from real-property taxation of residential facilities maintained by hospital for patients, staff, or others. 61 ALR4th 1105.
Tax legislation as violating Federal Constitution's First Amendment—Supreme Court cases. 103 L Ed 2d 951.

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1. In general

This section [Code 1942, § 9697] designates what property shall be exempt from taxation, all property being taxable except that named. Teche Lines, Inc. v Board of Sup'rs (1932) 165 Miss 617, 143 So 486.

This section [Code 1942, § 9697] and subsequent sections declare the general policy of the state with regard to exemptions. All property within the territorial limits of the state shall be taxed except such as shall be specifically exempted. Barnes v Jones (1925) 139 Miss 675, 103 So 773, 43 ALR 673.

A tax-collector, being merely a ministerial officer, cannot determine the constitutionality of a statute exempting a property owner from liability for taxes. Yazoo & M. V. R. Co. v West (1901) 78 Miss 789, 29 So 475.

Section 27-35-35 and § 27-35-37 are not unconstitutionally vague and ambiguous in that they fail to set forth a specific formula for valuation of branch bank intangibles. Any vagueness or ambiguity in § 27-35-35 and § 27-35-37 when read in isolation is cured by reading them in pari materia with other statutes dealing with the same or similar subjects, especially § 27-13-13. Additionally, § 27-35-35 is not unconstitutional on the ground that it fails to allow deduction from taxable capital (i.e., net worth) those amounts invested in tax exempt government securities since government obligations are expressly exempted from ad valorem taxation by § 27-31-1(u). It is clear that § 27-31-1(u) is to be read in pari materia with all taxation statutes and nothing in § 27-35-35 implies that the general exemptions of § 27-31-1 are inapplicable to banks. Calhoun County Bd. of Supervisors v Grenada Bank (1988, Miss) 543 So 2d 138.

Parents of Black school children have standing to challenge the constitutionality of § 27-31-1(d) insofar as it is applied to grant state, county, or municipal sales of property tax exemptions to any private school in Mississippi which engages in racial discrimination in admissions policies for students and employment of faculty and staff, notwithstanding that plaintiffs failed to allege that any private racially desegregated school within the state will cease to operate if it is denied exemptions from the taxes under attack. Moton v Lambert (1981, ND Miss) 508 F Supp 367.

2. Construction, generally

While tax exemption statute must be strictly construed against the exemption and all reasonable doubts be resolved against it, and hospital has burden of showing right to the exemption, courts will not ascribe to legislature intention to be unfair and unjust and will not so interpret exemption statute as to cause unthought-of results. Board of Supervisors v Vicksburg Hospital, Inc. (1935) 173 Miss 805, 163 So 382.

The law exempting property will be strictly construed against the exemption and in construing the statute the rule ejusdem generis applies. Currie-Finch Brick & Lumber Co. v Miller (1920) 123 Miss 850, 86 So 579.

But while as a general rule exemptions from taxation must be strictly construed, the legislature has the authority to relax such rule with reference to educational and religious institutions. Adams County v Catholic Diocese of Natchez (1916) 110 Miss 890, 71 So 17.

By exempting bonds authorized by the Agriculture and Industry Act and the income therefrom, the legislature must have intended to benefit the bondholders, not the county, since § 25-31-1(b) already exempted property of the State of Mississippi and its political subdivisions. Board of Supervisors v Hattiesburg Coca-Cola Bottling Co. (1984, Miss) 448 So 2d 917.

In determining whether a labor union was a benevolent organization, so as to exempt its building from ad valorem taxation, the Supreme Court was not bound by rulings of the Attorney General and the State Tax Commission categorizing labor unions as fraternal and benevolent organizations, or by the fact that the union was allowed certain federal tax exemptions. United Rubber, etc. v Lee County Board of Supervisors (1979, Miss) 369 So 2d 497.

3. Burden of proof

One claiming exemption from taxation has the burden of show-

ing that the claim comes clearly within exemption law, unaffected by other statutes which clearly render property subject to lien for drainage district assessment. Willis Creek Drainage Dist. v Yazoo County (1950) 209 Miss 849, 48 So 2d 498.

Exemption from taxation is not presumed, but the burden of proof is on those who claim the exemption. Barnes v Jones (1925) 139 Miss 675, 103 So 773, 43 ALR 673.

4. Property of United States, state, or subdivisions thereof

A tax sale in 1933 of city owned property was void because of the statute which exempts from taxation all property belonging to municipal corporations. Richton Tie & Timber Co. v McWilliams (1953) 218 Miss 355, 67 So 2d 374.

Under this section [Code 1942, § 9697], no school is liable for the drainage district taxes sought to be imposed upon it, nor are the county or school lands liable merely because the same are benefited by drainage improvements. Sunflower County v Moorhead Drainage Dist. (1953) 216 Miss 190, 62 So 2d 214.

The board of supervisors could, in their discretion, pay out of general county funds the assessment tax levied by drainage district on realty used as county farm and where they ruled against payment of taxes, the realty used could not be liable for the tax. Sunflower County v Moorhead Drainage Dist. (1953) 216 Miss 190, 62 So 2d 214.

This section [Code 1942, § 9697] was never intended to abate an existing judgment lien as fixed by a final decree of chancery court against land subsequently purchased by state or one of its subdivisions. Willis Creek Drainage Dist. v Yazoo County (1950) 209 Miss 849, 48 So 2d 498.

This section [Code 1942, § 9697], exempting from taxation property belonging to the state or to any county, levee board or municipal corporation thereof, was never intended to abate an existing judgment lien as fixed by final decree of the chancery court against land subsequently purchased by the state or one of its subdivisions. Willis Creek Drainage Dist. v Yazoo County (1950) 209 Miss 849, 48 So 2d 498.

While drainage district assessments are a species of taxation and are taxation in the broad sense of the term, they are not taxes within the meaning of this section [Code 1942, § 9697]. Willis Creek Drainage Dist. v Yazoo County (1950) 209 Miss 849, 48 So 2d 498.

A county, on becoming a voluntary purchaser of drainage district lands encumbered with a judgment lien for assessments, does not acquire such lands free of the lien despite the fact that the lands are to be used for the public purpose. Willis Creek Drainage Dist. v Yazoo County (1950) 209 Miss 849, 48 So 2d 498.

Attempted assessment of property owned by municipality on January 1, 1937 for state and county taxes for 1937 is void for reason that property was exempt from taxation and sale for unpaid taxes on third Monday of September 1938 is void sale. Tardo v Sterling (1949) 205 Miss 439, 38 So 2d 911, sugg of error overr (1949) 205 Miss 448, 39 So 2d 504.

Where contracts for the construction of ships for the United States Maritime Commission stipulated that the title to all materials, equipment, supplies and all other property assembled at the contractor's plant or elsewhere for the purpose of being used for the construction of the vessels, as well as title to the vessels themselves, on account of which payments were made, should vest immediately in the commission, and that the contractor should pay all taxes lawfully assessed against the vessels, materials, supplies or equipment, the partially constructed vessels were not subject to the tax imposed by this statute [Code 1942, § 9697], since they were the property of the federal government. Craig v Ingalls Shipbuilding Corp. (1942) 192 Miss 254, 5 So 2d 676.

Statute exempting property belonging to municipality includes lands acquired by enforcement of collection of municipal taxes. Alvis v Hicks (1928) 150 Miss 306, 116 So 612.

Where city purchased lands for city taxes in 1921 and 1922, and state purchased same lands for taxes in 1924, parties purchasing from state acquired no title. Alvis v Hicks (1928) 150 Miss 306, 116 So 612.

Lands conveyed to the state as swamp and overflowed lands from the federal government are not subject to taxation. Dees v Kingman (1918) 119 Miss 199, 80 So 528; Penick v Floyd Willis Cotton Co. (1919) 119 Miss 828, 81 So 540.

If the lands of the county are exempt from taxation, they remain exempt though excised and added to another county. See Code 1880, § 468, and this section [Code 1942, § 9697]. Warren County v Nall (1900) 78 Miss 726, 29 So 755.

The property of a city is exempt. A sale thereof for taxes is void and that too though no objection be made by the city officers. Meridian v Phillips (1888) 65 Miss 362, 4 So 119.

5. Specific exemptions

Rent from property owned by a Masonic lodge applied to the payment of the balance of the purchase price on the property is not being applied for fraternal and benevolent purposes. Senter v Tupelo (1924) 136 Miss 269, 101 So 372.

A printing press owned by a practical printer, editor and publisher of a newspaper and necessary to carry on his trade or business as such, is not exempt. Frantz v Dobson (1887) 64 Miss 631, 2 So 75.

Under the United States statutes, Loan and Currency Acts 1862, 1863, legal tender United States notes are exempt from state taxation, and so are national bank notes issued under Acts of Cong. February 25, 1863, and March 3, 1863. Horne v Green (1876) 52 Miss 452.

A labor union was not a benevolent organization, so as to exempt its building from ad valorem taxation, even though it participated to some extent in charitable causes, where its primary purpose was to negotiate and obtain for its members higher wages, fringe benefits, and better working conditions. United Rubber, etc. v Lee County Board of Supervisors (1979, Miss) 369 So 2d 497.

6. —Cemeteries

An acreage acquired by a cemetery corporation and platted for burial purposes, but in which only four or five persons were interred before the property was allowed to go to weeds and then rented for farming purposes, was not exempt from taxes assessed beginning with the year in which the property was so rented, except as to lots in which persons were actually buried. Evans v Jackson (1946) 201 Miss 14, 28 So 2d 249.

7. —Charitable institutions

Uncultivated land owned by charitable organization, from which a few loads of wood only were taken, held not exempt from taxation. Smith v Myatt (1927) 146 Miss 388, 111 So 590.

A social club for the diversion of members and persons connected with religious or charitable societies is held not to be exempt from taxation. New Standard Club v McRaven (1916) 111 Miss 92, 71 So 289.

Property belonging to a charitable society if leased for profit, is taxable under this section [Code 1942, § 9697]. Ridgely Lodge, I. O. O. F. v Redus (1900) 78 Miss 352, 29 So 163.

Use of the income of the property for charity does not warrant exemption. Ridgely Lodge, I. O. O. F. v Redus (1900) 78 Miss 352, 29 So 163.

A non-profit corporation's low income apartment complex for elderly, handicapped, and disabled persons was not a "charitable society" exempted from taxes pursuant to § 27-31-1(d), where the corporation received fair market rent from all tenants and used the rent revenues to pay mortgage payments. Better Living Services, Inc. v Bolivar County (1991, Miss) 587 So 2d 914.

8. —Religious institutions

Church property not being absolutely exempt from taxation, injunction was not proper method to determine exemption. North American Old Roman Catholic Diocese v Havens (1932) 164 Miss 119, 144 So 473, 84 ALR 1313.

Since church property was subject to taxation unless it was being used for religious or charitable purposes, the owner of the property was required to appear at meeting of board of supervisors fixed by law in which notice was given by publication that the board would hear objections to assessments, and if at such meeting property was assessed for taxation, appeal should be taken to circuit court where the case might be tried de novo. North American Old Roman Catholic Diocese v Havens (1932) 164 Miss 119, 144 So 473, 84 ALR 1313.

Unused church lot held not exempt from taxation. Enochs v Jackson (1926) 144 Miss 360, 109 So 864.

Personal property of a religious society which is devoted primarily to the use of gain and reinvestment is not exempt from taxes. Gunter v Jackson (1922) 130 Miss 637, 94 So 844.

Property which a religious society has no right to own is not exempt from taxation. Central Methodist Church v Meridian (1921) 126 Miss 780, 89 So 650.

Lands purchased by a church for religious purposes after a lien for the taxes of the then current year has attached, is acquired subject to, and not exempt from, such lien and a sale thereof for such taxes will be valid. McHenry Baptist Church v McNeal (1905) 86 Miss 22, 38 So 195.

9. —Educational institutions

Attempted back assessment of taxes against tract of land owned by college, not in excess of maximum limitation, located about one-fourth of a mile from the campus and used for trucking purposes, as well as for growing corn and hay for the horses owned and used by the college, was void, since such tract was exempt from taxation. Jackson v Belhaven College (1943) 195 Miss 734, 15 So 2d 621.

Religious society's land used in connection with college held not taxable merely because platted and subdivided into lots for future sale. Chandler v Executive Committee on Education (1933) 165 Miss 690, 146 So 597.

But property of an incorporated educational institution for the education of youth exclusively is exempt from taxation whether the institution is operated for private profit or otherwise. Board of Sup'rs v Gulf Coast Military Academy (1921) 126 Miss 729, 89 So 617.

A grant of specific exemption of land to a college negatives an intention on the part of the legislature to include land of a different character, which is held by the college as a part of its endowment. Millsaps College v Jackson (1927) 275 US 129, 72 L Ed 196, 48 S Ct 94.

10. —Hospitals

Although no particular beds or wards in a hospital were separately set aside, designated, and maintained for the use of charity patients, the property of the hospital was exempt from taxation, where it appeared that within the hospital one or more wards, or the equivalent thereof, as well as the services of the staff physician, were at all times available to charity patients, that both in number and in point of time more than enough patients to satisfy the statutory requirements were received and treated without any preliminary inquiry whether they were or were not able to pay, and were continued to be cared for even though it was ascertained that they were unable to pay, that none were turned away or were turned out, and that nurses and other servitors in the hospital were not permitted to know who were paying patients and who were being cared for and treated without pay. Natchez v Natchez Sanatorium Benevolent Ass'n (1941) 191 Miss 91, 2 So 2d 798.

The legislature, in providing for the exemption for hospital set out herein, intended to encourage treatment and hospitalization of those needing such assistance, but who were unable to pay for it. Rush Hospital Benevolent Ass'n v Board of Sup'rs (1940) 187 Miss 204, 192 So 829.

Where it appeared that a hospital maintained one or more charity wards, that all charges and expenses connected with the management of the hospital were shown to be reasonable, that the income thereof was used in operating the hospital and that the hospital had operated at a deficit, and it declared itself to be a nonprofit organization, the hospital came within the requirement set forth in this act and was entitled to the exemption. Rush Hospital Benevolent Ass'n v Board of Sup'rs (1940) 187 Miss 204, 192 So 829.

As regards exemption from taxation, what may be suitable compensation for services rendered by the hospital is primarily for the decision of the corporation; and if it is within the limit, as to which reasonable men might differ reasonably, the judgment of the hospital authorities should not be overturned; that should it be manifest that compensation for services was unreasonable, and the proof sustained that theory, then the judgment of the hospital authorities would not be controlling, but only persuasive. Rush Hospital Benevolent Ass'n v Board of Sup'rs (1940) 187 Miss 204, 192 So 829.

Under statute exempting from taxation all property belonging to religious, charitable, or benevolent organizations used for hospital purposes, and which hospital maintains one or more charity wards, and where all income is used entirely for hospital purposes, a hospital claiming exemption may be operated for profit in that its income may exceed its expenses, provided all of income is devoted to hospital purposes. Board of Sup'rs v Jackson Hospital Benevolent Ass'n (1937) 180 Miss 129, 177 So 27.

A hospital which was operated primarily for care of patients who paid therefor, and wherein care of charity patients was neither sought nor encouraged, was exempt from taxation, as against contention that hospital was operated for profit, where income of hospital other than that allocated to current expenses was being used to liquidate bona fide debt incurred by hospital in purchase of its property. Board of Sup'rs v Jackson Hospital Benevolent Ass'n (1937) 180 Miss 129, 177 So 27.

Statutory subsection exempting from taxation all property, real or personal, "whether belonging to religious or charitable or benevolent organizations," which is used for hospital purposes under conditions described in the subsection held to exempt from taxation property of hospitals therein described, though not belonging to religious, charitable, or benevolent organizations, the word "whether" not being intended as a videlicet, but merely to show that property of such organizations owning such hospitals was also exempt. Board of Supervisors v Vicksburg Hospital, Inc. (1935) 173 Miss 805, 163 So 382.

Where hospital had two charity wards and services of its physicians were furnished without charge and hospital was not a profit-making institution, hospital held exempt from taxation, though several physicians who were principal owners of the stock had their offices therein and with other physicians constituted themselves a clinic, using the hospital's facilities and dividing profits among themselves, where the services of the physicians rendered to hospital were worth more than benefits granted the physicians. Board of Supervisors v Vicksburg Hospital, Inc. (1935) 173 Miss 805, 163 So 382.

Where there was no separation of nurses' home from hospital or demand separately to assess the nurses' home on part of board of supervisors of county and matter was not raised in lower court, supreme court, finding that hospital was exempt from taxation, could not separately assess the nurses' home. Board of Supervisors v Vicksburg Hospital, Inc. (1935) 173 Miss 805, 163 So 382.

But under Code 1906, §§ 4251, 4252 (Code 1942, §§ 9697, 9710), property used as a home for nurses was not exempt from taxation, although the nurses were instructed therein with reference to

treatment of patients. Johnson v Mississippi Baptist Hospital (1925) 140 Miss 485, 106 So 1.

11. —Loans

The legislature in granting the exemption under these sections contemplated not in the accountant's conception of the effective rate of interest or interest yield, but the usual sense of the term, the interest which is charged and agreed to by the parties for the period of the loan. Bailey v North American Finance Co. (1951) 212 Miss 97, 54 So 2d 227.

Where a finance company charges interest on the money loaned at the rate of 5 per cent per annum for the entire period of the loan and then aggregates the principal and interest and divides the total into monthly installments, even though the interest yield which the finance company receives for the use of its money is in most instances more than 6 per cent, the loans did not have the rate of interest exceeding 6 per cent and those notes held by the company on such loans were not subject to ad valorem taxes. Bailey v North American Finance Co. (1951) 212 Miss 97, 54 So 2d 227.

Statute (Code 1942, § 37), providing for forfeiture of all interest and recovery of that paid where notes or evidence of indebtedness stipulate a rate of interest not greater than 6 per cent per annum after date or after maturity, but interest in excess of that per cent is in fact charged, was enacted to prevent evasion of subdivision (v) of this section [Code 1942, § 9697], exempting from taxation notes and loans made at a rate of interest not greater than 6 per cent per annum. Johnson v Carter (1948) 203 Miss 38, 33 So 2d 296.

Money loaned pursuant to arrangement between lender and brokerage company whereby interest in excess of six per cent was received by means of exaction of commission by brokerage company for investigation purposes, held subject to tax, in that arrangement was mere subterfuge for purpose of evading taxes. Gully v Gulf Coast Industrial Loan Co. (1934) 168 Miss 768, 151 So 754.

Loans made by foreign corporation consummated upon approval by corporation's New York office and traveling auditor's financial report, and evidenced by note kept with collateral in New York office and payable there, held not to have such local "business situs" as to subject them to local taxation. Gully v C. I. T. Corp. (1933) 168 Miss 268, 150 So 367.

Where lender delivered to borrower $95, taking note for $100 due ten months after date, loan held not exempt from taxation. Industrial Loan & Inv. Co. v Adams County (1932) 163 Miss 654, 141 So 756.

§ 27-31-21. Public school libraries and buildings.

All public libraries and buildings in which the free public schools are taught, and the lots on which same are situated, not exceeding four acres in dimensions, without cost to the state or any county or municipality thereof for rent or lease, and also the real and personal property of library associations, used for library purposes where no dividends are declared, and to which the children attending the public schools have free access, shall be exempt from all state, county, and municipal taxes.

SOURCES: Codes, 1906, § 4252; Hemingway's 1917, § 6883; 1930, § 3116; 1942, § 9710; Laws, 1900, ch. 52; 1924, ch. 338.

Cross references—
School libraries, see §§ 37-55-1 et seq.

Research and Practice References—
71 Am Jur 2d, State and Local Taxation §§ 382, 383.
84 CJS, Taxation §§ 283 et seq.

CHAPTER 65

Sales Tax

IN GENERAL

SEC.
27-65-105. Exemptions; governmental.

§ 27-65-105. Exemptions; governmental.

The exemption from the provisions of this chapter which are of a governmental nature or which are more properly classified as governmental exemptions than any other exemption classification of this chapter shall be confined to those persons or property exempted by this section or by provisions of the Constitutions of the United States or the State of Mississippi. No governmental exemption as now provided by any other section shall be valid as against the tax herein levied. Any subsequent governmental exemption from the tax levied hereunder shall be provided by amendment to this section.

No exemption provided in this section shall apply to taxes levied by Section 27-65-15 or 27-65-21, Mississippi Code of 1972, except as provided by subsection (f) of this section.

The tax levied by this chapter shall not apply to the following:

(a) Sales of property, labor or services taxable under Sections 27-65-17, 27-65-19 and 27-65-23, when sold to and billed directly to and payment therefor is made directly by the United States government, the State of Mississippi and its departments, institutions, counties and municipalities or departments or school districts of said counties and municipalities.

The exemption from the tax imposed under this chapter shall not apply to sales of tangible personal property, labor or services to contractors purchasing in the performance of contracts with the United States, the State of Mississippi, counties and municipalities.

(b) Sales to schools, when such schools are supported wholly or in part by funds provided by the State of Mississippi, provided that this exemption does not apply to sales of property which is not to be used in the ordinary operation of the school, or which is to be resold to the students or the public.

(c) Amounts received from the sale of school textbooks to students.

(d) Sales to the Mississippi Band of Choctaw Indians, but not to Indians individually.

(e) Sales of fire fighting equipment to governmental fire departments or volunteer fire departments for their use.

(f) Sales of any gas from any project, as defined in the Municipal Gas Authority of Mississippi Law, to any municipality shall not be subject to sales, use or other tax.

SOURCES: Laws, 1978, ch. 347, § 5; 1979, chs. 355, 461, § 1; 1988, ch. 515, § 37, eff from and after passage (approved May 16, 1988).

Editor's Note—

Laws, 1979, ch. 461, § 2, effective from and after July 2, 1979, provides as follows:

"Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the Mississippi Sales Tax Law or the Mississippi Use Tax Law prior to the date on which this act becomes effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which this act becomes effective, or shall thereafter be begun; and the provisions of the aforesaid statutes and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to the date on which this act becomes effective, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Cross references—

Fire departments, generally, see §§ 21-25-1 et seq.

Use tax exemptions, see § 27-67-7.

Exemptions from salesmen's tax, see § 27-67-507.

Provisions of the Municipal Gas Authority of Mississippi Law, see §§ 77-6-1 et seq.

Research and Practice References—
68 Am Jur 2d, Sales and Use Taxes §§ 100 et seq.
15 CJS, Commerce §§ 111, 112.

Annotations—
Sale or use tax as within tax exemption provisions of statutes other than those imposing such taxes. 1 ALR2d 465.
Sales and use taxes: exemption of casual, isolated, or occasional sales. 42 ALR3d 292.
Exemption of charitable or educational organization from sales or use tax. 53 ALR3d 748.

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former § 27-65-29

1.-5. [Reserved for future use.]

6. Under former § 27-65-29

Under statute levying a tax on the gross income from business of operating a hotel and also statute [Code 1942, § 10113] exempting from the general sales tax so much of the gross income as it derived from sales of tangible property to the United States Government and so much thereof as it derived from charges for labor to the United States government, the furnishing of lodging in a hotel to the United States government is neither sale of tangible property nor a charge for labor. Edwards House Co. v Stone (1952) 216 Miss 96, 61 So 2d 663.

A hotel operator, who contracted with the United States government to supply lodging to army and air force recruits and agreed that the government would not be expected to pay the sales tax of such lodgings, was himself liable for the sales tax upon the lodgings so furnished. Edwards House Co. v Stone (1952) 216 Miss 96, 61 So 2d 663.

An amount received from a federal agency for services rendered in compressing cotton was subject to the privilege tax hereunder [Code 1942, § 10113], such amount not being income from a sale to the government within the exception therein provided. Compress of Union v Stone (1940) 188 Miss 49, 193 So 329, cert den 311 US 668, 85 L Ed 429, 61 S Ct 27.

The imposition of a privilege tax on an amount received from a federal agency for services rendered in compressing cotton was not violative of the federal constitution as being a tax on one of the federal governmental agencies, since the tax was not imposed on a federal governmental agency but on income derived from such an agency. Compress of Union v Stone (1940) 188 Miss 49, 193 So 329, cert den 311 US 668, 85 L Ed 429, 61 S Ct 27.

An asserted tax exemption is to be construed strictly against the one who asserts a claim of exemption, and the language of this section [Code 1942, § 10116] must be construed most favorably to the taxing power, with the claimant having the burden of showing clearly his right to the exemption. Fuel Services, Inc. v Rhoden (1971, Miss) 245 So 2d 600.

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CHAPTER 101

Annual Reports by Departments of Government and State-Supported Institutions

SEC.
27-101-3. How reports transmitted to legislature.

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§ 27-101-3. How reports transmitted to legislature.

Such annual reports, inexpensively reproduced, should be transmitted to the Legislature in the following manner: one (1) original copy to the Governor; one (1) copy to the Lieutenant Governor; one (1) copy to the Speaker of the House of Representatives; one (1) copy to the State Fiscal Management Board; one (1) copy to the House Appropriations Committee; one (1) copy to the Senate Appropriations Committee; and three (3) copies to the State Librarian.

SOURCES: Codes, 1942, § 9099.3; Laws, 1966, ch. 547, § 5; 1970, ch. 530, § 1; 1989, ch. 321, § 6, eff from and after July 1, 1989.

Cross references—
Nature of department reports, see § 31-1-19.

TITLE 31

PUBLIC BUSINESS, BONDS AND OBLIGATIONS

Chapter 1. General Provisions Relative to Public Contracts
Chapter 7. Public Purchases

CHAPTER 1

General Provisions Relative to Public Contracts

SEC.
31-1-1. Contracts for printing, binding, etc.

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§ 31-1-1. Contracts for printing, binding, etc.

The responsibility for the making of contracts for printing, binding, engraving and lithographing is hereby vested in each state agency or office which requires such printing, binding, engraving and lithographing, including but not restricted to the Secretary of State, State Department of Education, State Tax Commission, Supreme Court, Department of Insurance, State Auditor, Public Service Commission, State Treasurer, State Fiscal Management Board, State Veterans Affairs Board, Attorney General, Department of Agriculture and Commerce, State Board of Pharmacy, State Board of Dental Examiners, State Law Library, State Board of Health, Mississippi Department of Corrections, State Educational Finance Commission, Department of Archives and History, Mississippi State Hospital and Board of Trustees of State Institutions of Higher Learning.

All contracts referred to herein shall be submitted to and approved by the State Fiscal Management Board prior to their execution, except that those contracts under the jurisdiction of the Legislature shall be submitted to and approved by the Legislative Budget Office.

All state agencies shall purchase all commodities required for their operation or for the proper fulfillment of their duties and functions in accordance with Chapter 7 of this title in order to coordinate and promote efficiency and economy in the purchase of such commodities for the state.

SOURCES: Codes, 1942, §§ 8961-01, 8961-04; Laws, 1968, ch. 506, §§ 1, 29; 1978, ch. 458, § 24; 1984, ch. 488, § 193; 1986, ch. 500, § 15; 1987, ch. 461, § 2, eff from and after passage (approved April 14, 1987).

Editor's Note—

Section 7-7-2, as added by Laws, 1984, chapter 488, § 90, and amended by Laws, 1985, chapter 455, § 14, Laws 1986, chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws, 1989, chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws, 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the "Department of Finance and Administration".

Section 37-45-1 provides that the State Educational Finance Commission shall be abolished and functions and duties transferred to the State Board of Education. Section 37-45-3 further provides that all references in laws, of the state to "State Educational Finance Commission" or "commission", when referring to the Educational Finance Commission, shall be construed to mean the State Board of Education.

Laws, 1984, ch. 488, § 341, provides as follows:

"Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

Laws, 1987, ch. 461, § 1, provides as follows:

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"SECTION 1. The State Fiscal Management Board shall make an evaluation of all printing shops currently operated by the state agencies, departments and institutions located within the metropolitan area of the City of Jackson, considering the location, accessibility and efficiency of operation of the shops, and make a report to the Legislature on or before December 15, 1987, with recommendations and suggestions on the elimination, consolidation or other improvements relating to such printing operations."

Cross references—

Joint legislative budget committee and legislative budget office, generally, see §§ 27-103-101 et seq.

Applicability of this section to acquisition of books, blanks, and stationery by the state board of medical licensure, see § 73-25-39.

Annotations—

Construction and effect of "changed conditions" clause in public works or construction contract with state or its subdivision. 56 ALR4th 1042.

CHAPTER 7

Public Purchases

IN GENERAL

SEC.
31-7-13. Bid requirements and exceptions; public auctions.

§ 31-7-13. Bid requirements and exceptions; public auctions.

All agencies and governing authorities shall purchase their commodities and printing; contract for fire insurance, automobile insurance, casualty insurance (other than workers' compensation) and liability insurance; and contract for public construction as herein provided.

(a) Purchases which do not involve an expenditure of more than Five Hundred Dollars ($500.00), exclusive of freight or shipping charges, may be made without advertising or otherwise requesting competitive bids. Provided, however, that nothing contained in this paragraph shall be construed to prohibit any agency or governing authority from establishing procedures which require competitive bids on purchases of Five Hundred Dollars ($500.00) or less.

(b) Purchases which involve an expenditure of more than Five Hundred Dollars ($500.00) but not more than Five Thousand Dollars ($5,000.00), exclusive of freight and shipping charges, may be made from the lowest and best bidder without publishing or posting advertisement for bids, provided at least two (2) competitive written bids have been obtained. Any governing authority purchasing commodities pursuant to this paragraph (b) may authorize its purchasing agent, or his designee, with regard to governing authorities other than counties, or its purchase clerk, or his designee, with regard to counties, to accept the lowest and best competitive written bid. Such authorization shall be made in writing by the governing authority and shall be maintained on file in the primary office of the agency and recorded in the official minutes of the governing authority, as appropriate. The purchasing agent or the purchase clerk, or their designee, as the case may be, and not the governing authority, shall be liable for any penalties and/or damages as may be imposed by law for any act or omission of the purchasing agent or purchase clerk, or their designee, constituting a violation of law in accepting any bid without approval by the governing authority. The term "competitive written bid" shall mean a bid submitted on a bid form furnished by the buying agency or governing authority and signed by authorized personnel representing the vendor, or a bid submitted on a vendor's letterhead or identifiable bid form and signed by authorized personnel representing the vendor.

(c) Purchases which involve an expenditure of more than Five Thousand Dollars ($5,000.00), exclusive of freight and shipping charges, may be made from the lowest and best bidder after advertising for competitive sealed bids once each week for two (2) consecutive weeks in a regular newspaper published in the county or municipality in which such agency or governing authority is located. The date as published for the bid opening shall not be less than seven (7) working days after the last published notice; however, if the purchase involves a construction project in which the estimated cost is in excess of Ten Thousand Dollars ($10,000.00), such bids shall not be opened in less than fifteen (15) working days after the last notice is published and the notice for the purchase of such construction shall be published once each week for two (2) consecutive weeks. The notice of intention to let contracts or purchase equipment shall state the time and place at which bids shall be received, list the contracts to be made or types of equipment or supplies to be purchased, and, if all plans and/or specifications are not published, refer to the plans and/or specifications on file. In all cases involving governing authorities, before the notice shall be published or posted, the plans or specifications for the construction or equipment being sought shall be filed with the clerk of the board of the governing authority, and there remain. If there is no newspaper published in the county or municipality, then such notice shall be given by posting same at the courthouse, or for

municipalities at the city hall, and at two (2) other public places in the county or municipality, and also by publication once each week for two (2) consecutive weeks in some newspaper having a general circulation in the county or municipality in the above provided manner. On the same date that the notice is submitted to the newspaper for publication, the agency or governing authority involved shall mail written notice to the main office of the Mississippi Contract Procurement Center that contains the same information as that in the published notice. In addition to these requirements, agencies shall maintain a vendor file and vendors of the equipment or commodities being sought may be mailed solicitations and specifications, and a bid file shall be established which shall indicate those vendors to whom such solicitations and specifications were mailed, and such file shall also contain such information as is pertinent to the bid. Specifications pertinent to such bidding shall be written so as not to excluae comparable equipment of domestic manufacture. Provided, however, that should valid justification be presented, the Department of Finance and Administration or the board of a governing authority may approve a request for specific equipment necessary to perform a specific job. Provided further, that a registered professional engineer or architect may write specifications for a governing authority to require a specific item of equipment available only from limited sources or vendors when such specifications conform with the rules and regulations promulgated by an appropriate federal agency regulating such matters under the federal procurement laws. Further, such justification, when placed on the minutes of the board of a governing authority, may serve as authority for that governing authority to write specifications to require a specific item of equipment needed to perform a specific job. In addition to these requirements, from and after July 1, 1990, vendors of relocatable classrooms and the specifications for the purchase of such relocatable classrooms published by local school boards shall meet all pertinent regulations of the State Board of Education, including prior approval of such bid by the State Department of Education. Nothing in this section shall prohibit any agency or governing authority from writing specifications to include life-cycle costing, total cost bids, extended warranties or guaranteed buy-back provisions, provided that such bid requirements shall be in compliance with regulations established by the Department of Audit.

(d) Purchases may be made from the lowest and best bidder. In determining the lowest and best bid, freight and shipping charges shall be included. If any governing authority accepts a bid other than the lowest bid actually submitted, it shall place on its minutes detailed calculations and narrative summary showing that the accepted bid was determined to be the lowest and best bid, including the dollar amount of the accepted bid and the dollar amount of the lowest bid. No agency or governing authority shall accept a bid based on items not included in the specifications.

(e) Any lease-purchase of equipment which an agency is not required to lease-purchase under the master lease-purchase program pursuant to Section 31-7-10 and any lease-purchase of equipment which a governing authority elects to lease-purchase may be acquired by a lease-purchase agreement under this paragraph (e). Lease-purchase financing may also be obtained from the vendor or from a third-party source after having solicited and obtained at least two (2) written competitive bids, as defined in paragraph (b) of this section, for such financing without advertising for such bids. Solicitation for the bids for financing may occur before or after acceptance of bids for the purchase of such equipment or, where no such bids for purchase are required, at any time before the purchase thereof. No such lease-purchase agreement shall be for an annual rate of interest which is greater than the overall maximum interest rate to maturity on general obligation indebtedness permitted under Section 75-17-101, and the term of such lease-purchase agreement shall not exceed the useful life of property covered thereby as determined according to the upper limit of the asset depreciation range (ADR) guidelines for the Class Life Asset Depreciation Range System established by the Internal Revenue Service pursuant to the United States Internal Revenue Code and regulations thereunder as in effect on December 31, 1980, or comparable depreciation guidelines with respect to any equipment not covered by ADR guidelines. Any lease-purchase agreement entered into pursuant to this paragraph (e) may contain any of the terms and conditions which a master lease-purchase agreement may contain under the provisions of Section 31-7-10(5), and shall contain an annual allocation dependency clause substantially similar to that set forth in Section 31-7-10(8). Each agency or governing authority entering into a lease-purchase transaction pursuant to this paragraph (e) shall maintain with respect to each such lease-purchase transaction the same information as required to be maintained by the Department of Finance and Administration pursuant to Section 31-7-10(13). However, nothing contained in this section shall be construed to permit agencies to acquire items of equipment with a total acquisition cost in the aggregate of less than Ten Thousand Dollars ($10,000.00) by a single lease-purchase trans-

action. All equipment, and the purchase thereof by any lessor, acquired by lease-purchase under this paragraph and all lease-purchase payments with respect thereto shall be exempt from all Mississippi sales, use and ad valorem taxes. Interest paid on any lease-purchase agreement under this section shall be exempt from State of Mississippi income taxation.

(f) When necessary to ensure ready availability of commodities for public works and the timely completion of public projects, no more than two (2) alternate bids may be accepted by a governing authority for commodities. No purchases may be made through use of such alternate bids procedure unless the lowest and best bidder, for reasons beyond his control, cannot deliver the commodities contained in his bid. In that event, purchases of such commodities may be made from one (1) of the bidders whose bid was accepted as an alternate.

(g) In the event a determination is made by an agency or governing authority after a construction contract is let that changes or modifications to the original contract are necessary or would better serve the purpose of the agency or the governing authority, such agency or governing authority may, in its discretion, order such changes pertaining to the construction that are necessary under the circumstances without the necessity of further public bids; provided that such change shall be made in a commercially reasonable manner and shall not be made to circumvent the public purchasing statutes.

(h) In the event any agency or governing authority shall have advertised for bids for the purchase of gas, diesel fuel, oils and other petroleum products and coal and no acceptable bids can be obtained, such agency or governing authority is authorized and directed to enter into any negotiations necessary to secure the lowest and best contract available for the purchase of such commodities.

(i) Any agency or governing authority authorized to enter into contracts for the construction, maintenance, surfacing or repair of highways, roads or streets, may include in its bid proposal and contract documents a price adjustment clause with relation to the cost to the contractor, including taxes, based upon an industry-wide cost index, of petroleum products including asphalt used in the performance or execution of the contract or in the production or manufacture of materials for use in such performance. Such industry-wide index shall be established and published monthly by the State Department of Transportation with a copy thereof to be mailed, upon request, to the clerks of the governing authority of each municipality and the clerks of each board of supervisors throughout the state. The price adjustment clause shall be based on the cost of such petroleum products only and shall not include any additional profit or overhead as part of the adjustment. The bid proposals or document contract shall contain the basis and methods of adjusting unit prices for the change in the cost of such petroleum products.

(j) If the executive head of any agency of the state shall determine that an emergency exists in regard to the purchase of any commodities or repair contracts, so that the delay incident to giving opportunity for competitive bidding would be detrimental to the interests of the state, then the provisions herein for competitive bidding shall not apply and the head of such agency shall be authorized to make the purchase or repair. Total purchases so made shall only be for the purpose of meeting needs created by the emergency situation. In the event such executive head is responsible to an agency board, at the meeting next following the emergency purchase, documentation of the purchase, including a description of the commodity purchased, the purchase price thereof and the nature of the emergency shall be presented to the board and placed on the minutes of the board of such agency. The head of such agency shall, at the earliest possible date following such emergency purchase, file with the Department of Finance and Administration (i) a statement under oath certifying the conditions and circumstances of the emergency, and (ii) a certified copy of the appropriate minutes of the board of such agency, if applicable.

(k) If the governing authority, or the governing authority acting through its designee, shall determine that an emergency exists in regard to the purchase of any commodities or repair contracts, so that the delay incident to giving opportunity for competitive bidding would be detrimental to the interest of the governing authority, then the provisions herein for competitive bidding shall not apply and any officer or agent of such governing authority having general or special authority therefor in making such purchase or repair shall approve the bill presented therefor, and he shall certify in writing thereon from whom such purchase was made, or with whom such a repair contract was made. At the board meeting next following the emergency purchase or repair contract, documentation of the purchase or repair contract, including a description of the commodity purchased, the price thereof and the nature of the emergency shall be presented to the board and shall be placed on the minutes of the board of such governing authority.

(l) The commissioners or board of trustees of any hospital owned or owned and operated separately or jointly by one or more counties, cities, towns, supervisors districts or election districts, or combinations thereof, may contract with such lowest and best bidder for the purchase or lease of any commodity under a contract of purchase or lease-purchase agreement whose obligatory terms do not exceed five (5) years. In addition to the authority granted herein, the commissioners or board of trustees are authorized to enter into contracts for the lease of equipment or services, or both, which it considers necessary for the proper care of patients if, in its opinion, it is not financially feasible to purchase the necessary equipment or services. Any such contract for the lease of equipment or services executed by the commissioners or board shall not exceed a maximum of five (5) years' duration and shall include a cancellation clause based on unavailability of funds. If such cancellation clause is exercised, there shall be no further liability on the part of the lessee.

(m) Excepted from bid requirements are:

(i) Purchasing agreements, contracts and maximum price regulations executed or approved by the Department of Finance and Administration.

(ii) Repairs to equipment, when such repairs are made by repair facilities in the private sector; however, engines, transmissions, rear axles and/or other such components shall not be included in this exemption when replaced as a complete unit instead of being repaired and the need for such total component replacement is known before disassembly of the component; provided, however, that invoices identifying the equipment, specific repairs made, parts identified by number and name, supplies used in such repairs, and the number of hours of labor and costs therefor shall be required for the payment for such repairs.

(iii) Purchases of parts for repairs to equipment, when such repairs are made by personnel of the agency or governing authority; however, entire assemblies, such as engines or transmissions, shall not be included in this exemption when the entire assembly is being replaced instead of being repaired.

(iv) Raw unprocessed deposits of gravel or fill dirt which are to be removed and transported by the purchaser.

(v) Motor vehicles or other equipment purchased from an agency or governing authority at a public auction held for the purpose of disposing of such vehicles or other equipment.

(vi) Purchases, sales, transfers or trades by governing authorities when such purchases, sales, transfers or trades are made by a private treaty agreement or through means of negotiation, from any federal agency or authority, another governing authority or state agency of the State of Mississippi, or any state agency of another state adjacent to the State of Mississippi. Nothing in this section shall permit such purchases through public auction except as provided for in paragraph (v) of this section.

(vii) Perishable supplies or foods purchased for use in connection with hospitals, the school lunch programs, homemaking programs and for the feeding of county or municipal prisoners.

(viii) Noncompetitive items available from one (1) source only.

(ix) Construction of incinerators and other facilities for disposal of solid wastes in which products either generated therein, such as steam, or recovered therefrom, such as materials for recycling, are to be sold or otherwise disposed of; provided, however, in constructing such facilities a governing authority or agency shall publicly issue requests for proposals, advertised for in the same manner as provided herein for seeking bids for public construction projects, concerning the design, construction, ownership, operation and/or maintenance of such facilities, wherein such requests for proposals when issued shall contain terms and conditions relating to price, financial responsibility, technology, environmental compatibility, legal responsibilities and such other matters as are determined by the governing authority or agency to be appropriate for inclusion; and after responses to the request for proposals have been duly received, the governing authority or agency may select the most qualified proposal or proposals on the basis of price, technology and other relevant factors and from such proposals, but not limited to the terms thereof, negotiate and enter contracts with one or more of the persons or firms submitting proposals.

(x) Supplies, commodities and equipment purchased by hospitals through group purchase programs pursuant to Section 31-7-38.

(xi) Purchases of data processing equipment made by governing authorities under the provisions of purchase agreements, contracts or maximum price regulations executed or approved by the State Central Data Processing Authority.

(xii) Energy efficiency services and equipment acquired by school districts, junior colleges, institutions of higher learning and state agencies or other applicable governmental entities on a shared-savings, lease or lease-purchase basis pursuant to Section 31-7-14.

(xiii) Purchases of contracts for fire insurance, automobile insurance, casualty insurance, health insurance and liability insurance by governing authorities or agencies.

(xiv) Purchases of coal and/or natural gas by municipally-owned electric power generating systems that have the capacity to use both coal and natural gas for the generation of electric power.

(xv) Purchases by libraries or for libraries of books and periodicals; processed film, video cassette tapes, filmstrips and slides; recorded audio tapes, cassettes and diskettes; and any such items as would be used for teaching, research or other information distribution; however, equipment such as projectors, recorders, audio or video equipment, and monitor televisions are not exempt under this paragraph.

(xvi) Purchases of unmarked vehicles when such purchases are made in accordance with purchasing regulations adopted by the Department of Finance and Administration pursuant to Section 31-7-9(2).

(xvii) Sales, transfers or trades of any personal property between governing authorities within a county or any such transaction involving governing authorities of two (2) or more counties.

(xviii) Purchases of ballots printed pursuant to Section 23-15-351.

(xix) From and after July 1, 1990, contracts by Mississippi Authority for Educational Television with any private educational institution or private nonprofit organization whose purposes are educational in regard to the construction, purchase, lease or lease-purchase of facilities and equipment and the employment of personnel for providing multichannel interactive video systems (ITSF) in the school districts of this state.

(xx) From and after January 1, 1991, purchases made by state agencies involving any item that is manufactured, processed, grown or produced from the state's prison industries.

(xxi) Purchases of surveillance equipment or any other high-tech equipment to be used by narcotics agents in undercover operations, provided that any such purchase shall be in compliance with regulations established by the Department of Finance and Administration.

(xxii) Purchases by community or junior colleges of textbooks which are obtained for the purpose of renting such books to students as part of a book service system.

(xxiii) Purchases of commodities made by school districts from vendors with which any levying authority of the school district, as defined in Section 37-57-1, has contracted through competitive bidding procedures for purchases of the same commodities.

(xxiv) Emergency purchases made by the Public Employees' Retirement System pursuant to Section 25-11-15(7).

(xxv) Contracts or purchases by the State Prison Emergency Construction and Management Board when exercising its emergency powers to remove two thousand (2,000) inmates from county jails; however, exemptions under this subparagraph (xxv) do not apply to contracts or purchases for private correctional facilities, the South Mississippi Correctional Institution and the Central Mississippi Correctional Facility. This subparagraph shall stand repealed from and after July 1, 1996.

In connection with the purchase of noncompetitive items only available from one (1) source, a certification of the conditions and circumstances requiring the purchase shall be filed by the agency with the Department of Finance and Administration and by the governing authority with the board of the governing authority. Upon receipt of such certification the Department of Finance and Administration or the board of the governing authority, as the case may be, may, in writing, authorize the purchase, which authority shall be noted on the minutes of the body at the next regular meeting thereafter. In such situations, a governing authority is not required to obtain the approval of the Department of Finance and Administration.

(n)(i) All contracts for the purchase of commodities and equipment may be let for periods of not more

than twenty-four (24) months in advance, subject to applicable statutory provisions prohibiting the letting of contracts during specified periods near the end of terms of office.

(ii) All purchases made by governing authorities, including purchases made pursuant to the provisions of subparagraph (i) of this paragraph (n), may be made upon one (1) purchase order issued per month to each individual vendor prior to delivery of such commodities provided that each individual delivery, load or shipment purchased is properly requisitioned and is properly received and receipted by signed ticket, receipt or invoice, indicating thereon the point of delivery, and provided that, with respect to counties, such commodities are properly accounted for by the receiving clerk or an assistant receiving clerk as provided by Section 31-7-109. Such purchase order shall be invalid on the first calendar day of the month immediately following the month in which it was issued. Purchases in such month immediately following may be made only if a purchase order is issued for such month. Each monthly purchase order shall be retained in the records of the governing authority. Agencies may make purchases as authorized under this subparagraph (ii) in accordance with such regulations, policies and procedures as are promulgated by the Department of Finance and Administration.

(o) No contract or purchase as herein authorized shall be made for the purpose of circumventing the provisions of this section requiring competitive bids, nor shall it be lawful for any person or concern to submit individual invoices for amounts within those authorized for a contract or purchase where the actual value of the contract or commodity purchased exceeds the authorized amount and the invoices therefor are split so as to appear to be authorized as purchases for which competitive bids are not required. Submission of such invoices shall constitute a misdemeanor punishable by a fine of not less than Five Hundred Dollars ($500.00) nor more than One Thousand Dollars ($1,000.00), or by imprisonment for thirty (30) days in the county jail, or both such fine and imprisonment. In addition, the claim or claims submitted shall be forfeited.

(p) When in response to a proper advertisement therefor, no bid firm as to price is submitted to an electric utility for power transformers, distribution transformers, power breakers, reclosers or other articles containing a petroleum product, the electric utility may accept the lowest and best bid therefor although the price is not firm.

(q) The prohibitions and restrictions set forth in Sections 19-11-27, 21-35-27 and 31-7-49 shall not apply to a contract, lease or lease-purchase agreement entered pursuant to the requirements of this chapter.

(r) For the purposes of this section, the term "purchase" shall mean the total amount of money encumbered by a single purchase order.

(s) Notwithstanding any provision of this section to the contrary, any agency or governing authority, by order placed on its minutes, may, in its discretion, set aside not more than twenty percent (20%) of its anticipated annual expenditures for the purchase of commodities from minority businesses; however, all such set-aside purchases shall comply with all purchasing regulations promulgated by the Department of Finance and Administration and shall be subject to bid requirements under this section. Set-aside purchases for which competitive bids are required shall be made from the lowest and best minority business bidder. For the purposes of this paragraph, the term "minority business" means a business which is owned by a majority of persons who are United States citizens or permanent resident aliens (as defined by the Immigration and Naturalization Service) of the United States, and who are Asian, Black, Hispanic or Native American, according to the following definitions:

(i) "Asian" means persons having origins in any of the original people of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.

(ii) "Black" means persons having origins in any black racial group of Africa.

(iii) "Hispanic" means persons of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race.

(iv) "Native American" means persons having origins in any of the original people of North America, including American Indians, Eskimos and Aleuts.

(t) Nothing in this section shall be construed as authorizing any purchase not authorized by law.

SOURCES: Codes, 1942, § 9024-08; Laws, 1962, ch. 497, § 8; 1980, ch. 440, § 6; 1981, ch. 306, § 2; 1982, ch. 449, § 1; 1983, ch. 330, § 3, ch. 341; 1984, ch. 363; 1984, ch. 480, § 3; 1984, ch. 488, § 158; 1985, ch. 493, § 6; 1986, ch. 398; 1986, ch. 489, § 14; 1988, ch. 351; 1988, ch. 589, § 23; 1988 Ex Sess, ch. 14, § 65; 1989, ch. 349, § 1; 1989, ch. 394, § 3; 1990, ch. 534, § 27; 1990, ch. 545, § 2; 1990, ch. 561, § 2; 1990, 1st Ex Sess, ch. 51, § 2; 1991, ch. 337, § 1; 1991, ch. 523, § 1; 1992, ch. 571 § 3; 1993, ch. 418, § 2; 1993, ch. 617, § 12; 1993, ch. 556, § 3; 1994, ch. 471, § 2, eff from and after June 30, 1994; 1994 Ex Sess, ch. 26, § 22, eff from and after passage (approved August 23, 1994).

Editor's Note—

Laws, 1989, ch. 349, § 2, provides as follows:

"SECTION 2. Any contract for the purchase of commodities other than equipment for a period of not more than twenty-four (24) months in advance, which was made before the effective date of this act (March 12, 1989) and which would have been legal under paragraph (n) of Section 31-7-13 if such contract had been made after the effective date of this act (March 12, 1989), is ratified, confirmed and validated".

Laws, 1990, ch. 561, § 3, provides as follows:

"SECTION 3. Any contract for the purchase of commodities or equipment for a period of not more than twenty-four (24) months in advance, which was made before the effective date of this act and which would have been legal under paragraph (n) of Section 31-7-13 as amended by this act if such contract had been made after the effective date of this act, is ratified, confirmed and validated."

Laws, 1st Extraordinary Session 1990, ch. 51, § 3, effective June 30, 1990, provides as follows:

"SECTION 3. Any lease-purchase agreement by any agency entered into after April 4, 1990, and before the effective date of Senate Bill No. 2991, 1991 Regular Session [Laws, 1991, ch. 424], which was approved in writing by the Department of Finance and Administration, shall be a valid and binding obligation of such agency, in accordance with the terms of such lease-purchase agreement, to the same extent as any lease-purchase agreement entered into pursuant to the provisions of Section 31-7-13(e) as amended by Chapter 51, First Extraordinary Session of 1990. Any lease-purchase agreement by any governing authority entered into after April 4, 1990, and before the effective date of Senate Bill No. 2991, 1991 Regular Session [Laws, 1991, ch. 424], which is in compliance with Section 31-7-13(e), as amended by Chapter 51, First Extraordinary Session of 1990, shall be a valid and binding obligation of such governing authority, in accordance with the terms of such lease-purchase agreement, to the same extent as any lease-purchase agreement entered into pursuant to the provisions of Section 31-7-13(e) as amended by Chapter 51, First Extraordinary Session of 1990." [Amended, Laws, 1991, ch. 424, § 2, eff from and after passage (approved March 20, 1991).].

Cross references—

Purchase of data processing equipment by Mississippi Department of Information Technology Services, see §§ 25-53-5 and 25-53-21.

State contract price for public purchases, see § 31-7-12.

Public contracts for energy efficiency services, see § 31-7-14.

Penalties for violating the provisions of this chapter, see § 31-7-55.

Procedure on bids, see § 31-7-105.

Provision that an audit upon the close of the fiscal year of a county shall review the county's compliance with certain requirements of this section, inter alia, see § 31-7-115.

Prohibition of boards of supervisors from purchasing items or services for their county, except as provided in this section, see § 31-7-119.

Definition of "competitive sealed bidding" for purposes of purchases by office of telecommunications, see § 31-7-203.

Application of this section to the publication of an invitation to bid on group health insurance for certain school district personnel, see § 37-9-155.

Purchase by school districts participating in group purchasing programs for procuring services, commodities, supplies and equipment provided under School Lunch and Child Nutrition programs, as subject to public bid requirements prescribed by this section, see § 37-11-7.

Provisions governing prison industries, see §§ 47-5-531 through 47-5-575.

Duty of prison auditor with respect to bids, purchases, and sales, see § 47-5-35.

Application of definition of "minority" in Mississippi Small Business Assistance Act, see § 57-10-513.

Bidding and contracting procedures under Mississippi Superconducting Super Collider Act, see § 57-67-37.

Alternative bidding and contracting procedures under Mississippi Major Economic Impact Act, see § 57-75-21.

Amount of a bond by a successful bidder for a contract for the purchase of equipment by or on behalf of the state highway commission, see § 65-1-85.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

Annotations—

Waiver of competitive bidding requirements for state and local public building and construction contracts. 40 ALR4th 968.

Public contracts: authority of state or its subdivision to reject all bids. 52 ALR4th 186.

JUDICIAL DECISIONS

I. UNDER CURRENT LAW

1. In general
2.-5. [Reserved for future use.]

II. UNDER FORMER LAW

6. Under former §§ 31-7-43, 31-7-45.

I. UNDER CURRENT LAW

1. In general

Section 31-7-13 regulates the process by which boards of supervisors may purchase heavy equipment for road maintenance and other related purposes. Canton Farm Equipment, Inc. v Richardson (1987, Miss) 501 So 2d 1098.

Although a county board of supervisors may advertise for purchase of equipment pursuant to § 31-7-13, the board is not invariably required to accept the lowest bid, rather, the law contemplates that the board, if it accepts any bids at all, will accept the lowest and best bid and, if it accepts a bid that is not dollarwise the lowest, the board must place on its minutes the detailed calculations in a narrative summary explaining why the accepted bid was determined to be the lowest and best bid. Canton Farm Equipment, Inc. v Richardson (1987, Miss) 501 So 2d 1098.

2.-5. [Reserved for future use.]

II. UNDER FORMER LAW

6. Under former §§ 31-7-43, 31-7-45.

A special act of the Legislature authorizing the board of supervisors of a designated county to reimburse a former sheriff thereof for expense incurred in purchasing disinfectants for the county jail, which claim had previously been disallowed by the board of supervisors, was void as being within the prohibition of this section [Code 1942, § 9027] in suspending the operation of a general law (Code 1942, § 9027) relating to the purchase of supplies by the county which expressly requires contracts for the purchase of supplies, etc., to be let upon competitive bids and prohibits any individual members of the board from making such purchases. Beall v Board of Supervisors (1941) 191 Miss 470, 3 So 2d 839.

The statute was not complied with so as to permit recovery against a county for lumber supplies to a county supervisor for the repair of bridges in his district, one of which consumed more than $100 of such lumber, by dividing the bill for the total amounts of lumber into lots of less than $100 each, there being no emergency. Bigham v Lee County (1939) 184 Miss 138, 185 So 818.

"Emergency" in statute authorizing members of board of supervisors to make emergency expenditures is unforeseen occurrence of combination of circumstances calling for immediate action. Attala County v Mississippi Tractor & Equipment Co. (1932) 162 Miss 564, 139 So 628.

Statute empowering members of board of supervisors to make emergency expenditures held inapplicable, where articles were purchased as needed for county's road machinery. Attala County v Mississippi Tractor & Equipment Co. (1932) 162 Miss 564, 139 So 628.

When price of disinfectants for jail and courthouse exceeded one hundred dollars, individual member of board of supervisors had no authority to contract therefor. Franklin County v American Disinfectant Co. (1929) 153 Miss 583, 121 So 271.

A suit for bills of lumber, totaling over $1,400, sold to a member of a board of supervisors, without competitive bids having been secured, was dismissed, in the absence of a showing that any emergency existed suspending the requirement of the statute, notwithstanding it might be conceded that the account was susceptible of a breaking down into separate and independent items each less than $100. Duncan v Board of Sup'rs (1941, Miss) 4 So 2d 219.

TITLE 37
EDUCATION

Chapter 3. State Department of Education
Chapter 7. School Districts; Boards of Trustees of School Districts
Chapter 9. District Superintendents, Principals, Teachers, and Other Employees
Chapter 11. General Provisions Pertaining to Education
Chapter 19. Minimum Program of Education
Chapter 43. Textbooks
Chapter 47. State Aid for Construction of School Facilities
Chapter 55. School Libraries
Chapter 59. School Bonds and Obligations
Chapter 101. Institutions of Higher Learning; General Provision

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CHAPTER 3

State Department of Education

Sec.
37-3-11. Duties of state superintendent.

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§ 37-3-11. Duties of state superintendent.

(1) Until July 1, 1984, the State Superintendent of Public Education shall have the power and it shall be his duty:

(a) To supervise in the manner provided by law the public free schools, agricultural high schools and junior colleges of the state and to prescribe such rules and regulations for the efficient organization and conduct of same, as he may deem necessary.

(b) To preside over all meetings of the State Board of Education.

(c) To collect data for determining the proper distribution of the state common school funds.

(d) To have bound and preserved in his office, as the property of the state, all such school documents from other states and governments, books and pamphlets on educational subjects, school books, apparatus, maps, charts and the like, as shall be or have been purchased or donated for the use of his office.

(e) To keep a complete record of all his official acts and the acts of the State Board of Education.

(f) To prepare, have printed and furnish all officers charged with the administration of the laws pertaining to the public schools, such blank forms and books as may be necessary to the proper discharge of their duties; all of this printing shall be paid for out of funds provided by the Legislature.

(g) To have printed in pamphlet form the laws pertaining to the public schools and publish therein forms for conducting school business, the rules and regulations for the government of schools that he or the board of education may recommend, and such other matters as may be deemed worthy of public interest pertaining to the public schools; all of this printing shall be paid for out of funds provided by the Legislature.

(h) To meet the county superintendents annually at such time and place as he shall appoint for the purpose of accumulating facts relative to schools, to review the educational progress made in the various sections of the state, to compare views, discuss problems, hear discussions and suggestions relative to examinations and qualifications of teachers, methods of instruction, textbooks, summer schools for teach-

ers, visitation of schools, consolidation of schools, health work in the schools, vocational education and other matters pertaining to the public school system.

(i) To advise the county superintendents upon all matters involving the welfare of the schools, and at the request of any county superintendent to give his opinion upon a written statement of facts on all questions and controversies arising out of the interpretation and construction of the school laws, in regard to rights, powers and duties of school officers and county superintendents, and to keep a record of all such decisions. Before giving any opinion, the superintendent may submit the statement of facts to the Attorney General for his advice thereon, and it shall be the duty of the Attorney General forthwith to examine such statement, and suggest the proper decision to be made upon such facts.

(j) To require annually, and as often as he may deem proper, of county superintendents, detailed reports on the educational business of the various counties.

(k) To make reports concerning agricultural high schools and serve on various committees and boards as provided by law.

(l) On or before January 10 in each year in which the Legislature meets in regular session, to prepare, and have printed a report to the Legislature showing:

(1) The receipts and disbursements of all school funds officially handled by him;

(2) The number of school districts, school teachers employed, and pupils taught therein, and the attendance of pupils;

(3) County and district levies for common schools, high schools, agricultural high schools, consolidated schools and junior colleges;

(4) The conditions of vocational education in the State of Mississippi, a list of schools to which federal and state aid has been given, and a detailed statement of the expenditures of federal funds and the state funds that may be provided;

(5) Such general matters, information and recommendations as relate, in his opinion, to the educational interests of the state.

(m) To determine the number of educable children in the several school districts of the state under rules and regulations to be prescribed by the State Board of Education.

(n) To perform such other duties in the administration of the public schools as may be required by law.

(2) From and after July 1, 1984, the State Superintendent of Public Education shall perform the duties assigned to him by the State Board of Education, and he shall have the following duties:

(a) To serve as secretary for the State Board of Education;

(b) To be the chief administrative officer of the State Department of Education;

(c) To recommend to the State Board of Education for its consideration rules and regulations for the supervision of the public free schools and agricultural high schools of the state and for the efficient organization and conduct of the same;

(d) To collect data and make it available to the State Board for determining the proper distribution of the state common school funds;

(e) To keep a complete record of all official acts of the state superintendent and the acts of the State Board of Education;

(f) To prepare, have printed and furnish all officers charged with the administration of the laws pertaining to the public schools, such blank forms and books as may be necessary to the proper discharge of their duties, said printing to be paid for out of funds provided by the Legislature;

(g) To have printed in pamphlet form the laws pertaining to the public schools and publish therein forms for conducting school business, the rules and regulations for the government of schools that the State Superintendent or the Board of Education may recommend, and such other matters as may be deemed worthy of public interest pertaining to the public schools, said printing to be paid for out of funds provided by the Legislature;

(h) To meet all superintendents annually at such time and place as the State Superintendent shall appoint for the purpose of accumulating facts relative to schools, to review the educational progress made in the various sections of the state, to compare views, discuss problems, hear discussions and suggestions rel-

ative to examinations and qualifications of teachers, methods of instruction, textbooks, summer schools for teachers, visitation of schools, consolidation of schools, health work in the schools, vocational education and other matters pertaining to the public school system;

(i) To advise all superintendents upon all matters involving the welfare of the schools, and at the request of any superintendent to give an opinion upon a written statement of facts on all questions and controversies arising out of the interpretation and construction of the school laws, in regard to rights, powers and duties of school officers and superintendents, and to keep a record of all such decisions. Before giving any opinion, the superintendent may submit the statement of facts to the Attorney General, and it shall be the duty of the Attorney General forthwith to examine such statement and suggest the proper decision to be made upon such fact;

(j) To require annually, and as often as the State Superintendent may deem proper, of all superintendents, detailed reports on the educational business of the various districts;

(k) On or before January 10 in each year to prepare under the direction of the State Board of Education and have printed the annual report of the board to the Legislature showing:

(1) The receipts and disbursements of all school funds handled by the board;

(2) The number of school districts, school teachers employed, school administrators employed, pupils taught and the attendance record of pupils therein;

(3) County and district levies for each school district and agricultural high school;

(4) The condition of vocational education, a list of schools to which federal and state aid has been given, and a detailed statement of the expenditures of federal funds and the state funds that may be provided, and the ranking of subjects taught as compared with the state's needs;

(5) Such general matters, information and recommendations as relate, in the board's opinion, to the educational interests of the state;

(l) To determine the number of educable children in the several school districts under rules and regulations prescribed by the State Board of Education;

(m) To perform such other duties as may be prescribed by the State Board of Education.

SOURCES: Codes, 1930, § 6557; 1942, §§ 6245-07, 6245-07.5; Laws, 1924, ch. 283; 1930, ch. 278; 1946, ch. 297, § 7; 1966, ch. 418, § 1; 1970, ch. 364, § 1; 1982, Ex Sess, ch. 17, § 15; 1986, ch. 434, § 4, eff from and after July 1, 1986 (became law on April 4, 1986, without Governor's signature).

Cross references—

Duty of the attorney general to give written opinion to state officers upon questions of law relating to their offices, see § 7-5-25.

Duties of the state superintendent of public education in respect to driver education and training programs, see §§ 37-25-5, 37-25-9, 37-25-13.

Duty of the state superintendent of public education to inspect and enforce standards of agricultural high schools, see §§ 37-27-17, 37-27-19.

Duty of the state superintendent of public education to preside over meetings of the state board of education, see § 37-1-1.

Responsibility of the state superintendent of public education for planning functions of the department, see § 37-3-12.

Duty of the state superintendent of public education to serve on the state library board, see § 39-1-1.

Duty of the state superintendent of public education to serve on board overseeing state fire fighters school, see § 45-11-7.

Duty of the state superintendent of public education to consult with the secretary of state in respect to rules and regulations covering correspondence courses, see § 75-59-7.

Research and Practice References—

68 Am Jur 2d, Schools §§ 50 et seq.

78 CJS, Schools and School Districts § 90.

Annotations—

Regulations as to fraternities and similar associations connected with educational institution. 10 ALR3d 389.

Marriage or pregnancy of public school student as ground for expulsion or exclusion, or of restriction of activities. 11 ALR3d 996.

Validity of regulation by public school authorities as to clothes or personal appearance of pupils. 14 ALR3d 1201.

CHAPTER 7

School Districts; Boards of Trustees of School Districts

ARTICLE 7

BOARDS OF TRUSTEES; GENERAL POWERS AND DUTIES

SEC.
37-7-301. Powers and duties of school boards.
37-7-303. Insurance on school property.
37-7-333. Authority of school board of school district as to control of funds; reports of tax collector; deposit of funds; records.

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§ 37-7-301. Powers and duties of school boards.

The school boards of all school districts shall have the following powers, authority and duties in addition to all others imposed or granted by law, to wit:

(a) To organize and operate the schools of the district and to make such division between the high school grades and elementary grades as, in their judgment, will serve the best interests of the school;

(b) To introduce public school music, art, manual training and other special subjects into either the elementary or high school grades, as the board shall deem proper;

(c) To be the custodians of real and personal school property and to manage, control and care for same, both during the school term and during vacation;

(d) To have responsibility for the erection, repairing and equipping of school facilities and the making of necessary school improvements;

(e) To suspend or to expel a pupil for misconduct in the school, upon school buses, on the road to and from school, during recess or upon the school playgrounds, and to delegate such authority to the appropriate officials of the school district;

(f) To visit schools in the district, in their discretion, in a body for the purpose of determining what can be done for the improvement of the school in a general way;

(g) To support, within reasonable limits, the superintendent, administrative superintendent, principal and teachers where necessary for the proper discipline of the school;

(h) To exclude from the schools students with what appears to be infectious or contagious diseases; provided, however, such student may be allowed to return to school upon presenting a certificate from a public health officer or duly licensed physician that the student is free from such disease;

(i) To require those vaccinations specified by the State Health Officer as provided in Section 41-23-37, Mississippi Code of 1972;

(j) To see that all necessary utilities and services are provided in the schools at all times when same are needed;

(k) To authorize the use of the school buildings and grounds for the holding of public meetings and gatherings of the people under such regulations as may be prescribed by said board;

(l) To prescribe and enforce rules and regulations not inconsistent with law or with the regulations of the State Board of Education for their own government and for the government of the schools, and to transact their business at regular and special meetings called and held in the manner provided by law;

(m) To maintain and operate all of the schools under their control for such length of time during the year as may be required;

(n) To enforce in the schools the courses of study and the use of the textbooks prescribed by the proper authorities;

(o) To make orders directed to the superintendent of schools or administrative superintendent for the issuance of pay certificates for lawful purposes on any available funds of the district and to have full control of the receipt, distribution, allotment and disbursement of all funds provided for the support and operation of the schools of such school district whether such funds be derived from state appropriations, local ad valorem tax collections, or otherwise;

(p) To select all school district personnel in the manner provided by law, and to provide for such employee fringe benefit programs, including accident reimbursement plans, as may be deemed necessary and appropriate by the board;

(q) To provide and regulate athletic programs and other school activities;

(r) To join, in their discretion, any association of school boards and other public school-related organizations, and to pay from local funds other than minimum foundation funds, any membership dues;

(s) To expend local school activity funds, or other available school district funds, other than minimum education program funds, for the purposes prescribed under this paragraph. "Activity funds" shall mean all funds received by school officials in all school districts paid or collected to participate in any school activity, such activity being part of the school program and partially financed with public funds or supplemented by public funds. The term "activity funds" shall not include any funds raised and/or expended by any organization unless commingled in a bank account with existing activity funds, regardless of whether the funds were raised using school facilities. Organizations shall not be required to make any payment to any school for the use of any school facility if, in the discretion of the local school governing board, the organization's function shall be deemed to be beneficial to the official or extracurricular programs of the school. For the purposes of this provision, the term "organization" shall not include any organization subject to the control of the local school governing board. Activity funds may only be expended for any necessary expenses or travel costs, including advances, incurred by students and their chaperons in attending any in-state or out-of-state school-related programs, conventions or seminars and/or any commodities, equipment, travel expenses, purchased services or school supplies which the local school governing board, in its discretion, shall deem beneficial to the official or extracurricular programs of the district, including items which may subsequently become the personal property of individuals, including yearbooks, athletic apparel, book covers and trophies. Activity funds may be used to pay travel expenses of school district personnel. The local school governing board shall be authorized and empowered to promulgate rules and regulations specifically designating for what purposes school activity funds may be expended. The local school governing board shall provide (a) that such school activity funds shall be maintained and expended by the principal of the school generating the funds in individual bank accounts, or (b) that such school activity funds shall be maintained and expended by the superintendent of schools in a central depository approved by the board. The local school governing board shall provide that such school activity funds be audited as part of the annual audit required in Section 37-9-18. The State Auditor shall prescribe a uniform system of accounting and financial reporting for all school activity fund transactions;

(t) To contract, on a shared savings, lease or lease-purchase basis, for energy efficiency services and/or equipment as provided for in Section 31-7-14, not to exceed ten (10) years;

(u) To maintain accounts and issue pay certificates on school food service bank accounts;

(v)(i) To lease a school building from an individual, partnership, nonprofit corporation or a private for-profit corporation for the use of such school district, and to expend funds therefor as may be available from any non-minimum program sources. The school board of the school district desiring to lease a school building shall declare by resolution that a need exists for a school building and that the school district cannot provide the necessary funds to pay the cost or its proportionate share of the cost of a school building required to meet the present needs. The resolution so adopted by the school board shall be published once each week for three (3) consecutive weeks in a newspaper having a general circulation in the school district involved, with the first publication thereof to be made not less than thirty (30) days prior to the date upon which the school board is to act on the question of leasing a school building. If no petition requesting an election is filed prior to such meeting as hereinafter provided, then the school board may, by resolution spread upon its minutes, proceed to lease a school building. If at any time prior to said meeting a petition signed by not less than twenty percent (20%) or fifteen hundred

(1500), whichever is less, of the qualified electors of the school district involved shall be filed with the school board requesting that an election be called on the question, then the school board shall, not later than the next regular meeting, adopt a resolution calling an election to be held within such school district upon the question of authorizing the school board to lease a school building. Such election shall be called and held, and notice thereof shall be given, in the same manner for elections upon the questions of the issuance of the bonds of school districts, and the results thereof shall be certified to the school board. If at least three-fifths (3/5) of the qualified electors of the school district who voted in such election shall vote in favor of the leasing of a school building, then the school board shall proceed to lease a school building. The term of the lease contract shall not exceed twenty (20) years, and the total cost of such lease shall be either the amount of the lowest and best bid accepted by the school board after advertisement for bids or an amount not to exceed the current fair market value of the lease as determined by the averaging of at least two (2) appraisals by members of the American Institute of Real Estate Appraisers or the Society of Real Estate Appraisers. The term "school building" as used in this item (v) shall be construed to mean any building or buildings used for classroom purposes in connection with the operation of schools and shall include the site therefor, necessary support facilities, and the equipment thereof and appurtenances thereto such as heating facilities, water supply, sewage disposal, landscaping, walks, drives and playgrounds. The term "lease" as used in this item (v)(i) may include a lease/purchase contract;

(ii) If two (2) or more school districts propose to enter into a lease contract jointly, then joint meetings of the school boards having control may be held but no action taken shall be binding on any such school district unless the question of leasing a school building is approved in each participating school district under the procedure hereinabove set forth in item (v)(i). All of the provisions of item (v)(i) regarding the term and amount of the lease contract shall apply to the school boards of school districts acting jointly. Any lease contract executed by two (2) or more school districts as joint lessees shall set out the amount of the aggregate lease rental to be paid by each, which may be agreed upon, but there shall be no right of occupancy by any lessee unless the aggregate rental is paid as stipulated in the lease contract. All rights of joint lessees under the lease contract shall be in proportion to the amount of lease rental paid by each;

(w) To employ all noninstructional and noncertificated employees and fix the duties and compensation of such personnel deemed necessary pursuant to the recommendation of the superintendent of schools or the administrative superintendent;

(x) To employ and fix the duties and compensation of such legal counsel as deemed necessary;

(y) Subject to rules and regulations of the State Board of Education, to purchase, own and operate trucks, vans and other motor vehicles, which shall bear the proper identification required by law;

(z) To expend funds for the payment of substitute teachers and to adopt reasonable regulations for the employment and compensation of such substitute teachers;

(aa) To acquire in its own name by purchase all real property which shall be necessary and desirable in connection with the construction, renovation or improvement of any public school building or structure. If the board shall be unable to agree with the owner of any such real property in connection with any such project, the board shall have the power and authority to acquire any such real property by condemnation proceedings pursuant to Section 11-27-1 et seq., Mississippi Code of 1972, and for such purpose, the right of eminent domain is hereby conferred upon and vested in said board;

(bb) To charge reasonable fees related to the educational programs of the district, in the manner prescribed in Section 37-7-335;

(cc) Subject to rules and regulations of the State Board of Education, to purchase relocatable classrooms for the use of such school district, in the manner prescribed in Section 37-1-13;

(dd) Enter into contracts or agreements with other school districts, political subdivisions or governmental entities to carry out one or more of the powers or duties of the school board, or to allow more efficient utilization of limited resources for providing services to the public;

(ee) To provide for in-service training for employees of the district. Until June 30, 1994, the school boards may designate two (2) days of the minimum school term, as defined in Section 37-19-1, for employee in-service training for implementation of the new statewide testing system as developed by the State Board

of Education. Such designation shall be subject to approval by the State Board of Education pursuant to uniform rules and regulations;

(ff) The school boards of all school districts, as part of their duties to prescribe the use of textbooks, may provide that parents and legal guardians shall be responsible for the textbooks and for the compensation to the school district for any books which are not returned to the proper schools upon the withdrawal of their dependent child. If a textbook is lost or not returned by any student who drops out of the public school district, the parent or legal guardian shall also compensate the school district for the fair market value of the textbooks.

SOURCES: Codes, 1942, § 6328-24; Laws, 1953, Ex Sess, ch. 28, § 2; 1970, ch. 373, § 1; 1971, ch. 340, § 1; 1982, ch. 466, § 1; 1985, ch. 466, § 1; 1985, ch. 493, § 3; 1986, ch. 415, § 3; 1986, ch. 433, § 18; 1986, ch. 492, § 9; 1987, ch. 307, § 4; 1989, ch. 585, § 6; 1990, ch. 535, § 4; 1993, ch. 549, § 1; 1993, ch. 562, § 1; 1995, ch. 515, § 1, eff from and after passage (March 31, 1995); 1995, ch. 344, § 3, eff from and after July 1, 1995; 1995, ch. 426, § 2, eff from and after July 1, 1995.

Editor's Note—

Laws, 1989, ch. 585, § 9, provides as follows:

"If any section, paragraph, sentence, clause, phrase or any part of this act is declared to be unconstitutional or void, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no manner affected thereby but shall remain in full force and effect."

Section 7-7-2, as added by Laws, 1984, chapter 488, § 90, and amended by Laws, 1985, chapter 455, § 14, Laws 1986, chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall mean the state fiscal management board whenever they appear. Thereafter, Laws, 1989, chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer whenever they appear; Subsequently, Laws, 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Laws, 1990, ch. 588, § 7, amended this section effective July 1, 1990, provided that the Legislature by concurrent resolution adopted by the House and Senate in session prior to July 1, 1990 declare that sufficient funds were dedicated and made available for the implementation of Chapter 588. However, such funds were not made available by the Legislature prior to July 1, 1990, and by direction of the Office of the Attorney General of the State of Mississippi the amendatory provisions have not been printed in this volume. Text of the amendment can be found in the Advance Sheet Acts of the 1990 Legislative Session published by the Secretary of State's Office, Jackson, Mississippi.

Laws, 1995, ch. 515, § 2, provides as follows:

"SECTION 2. Any actions taken by school officials prior to the effective date of this act which are specifically authorized herein, are hereby ratified, approved and confirmed."

Cross references—

Statutory provisions affecting persons seeking to influence official actions of school boards of trustees, see § 5-7-17.

Cooperation in carrying out provisions regarding job development and training, see § 7-1-365.

Power of the state department of audit to audit the accounts of any school district, including activity funds, see § 7-7-211.

Public contracts for energy efficiency services, see § 31-7-14.

Furnishing of list prices of energy efficiency equipment and services, see § 31-7-19.

Emergency School Leasing Authority Act of 1986, see §§ 37-7-351 through 37-7-359.

School district's discipline plan, and recovery of damages from parent for child's destructive acts against school property, see § 37-1-53.

Provisions providing that all public school districts have a common system of administration after July 1, 1987, see §§ 37-6-1 et seq.

Power of boards of trustees of school districts to require physical examinations of school employees, see § 37-11-17.

Code of student conduct, see § 37-11-55.

Inclusion of immunization information in pupils' permanent records, see § 37-15-1.

Establishment of graduation standards, see § 37-16-7.

Establishment and maintenance of drivers' education courses by school boards, see § 37-25-3.

Letting of contracts and making of purchases by boards of trustees for school equipment and supplies, see §§ 37-39-1 et seq.

Pledge of monies from Education Enhancement Fund to pay debt service on debt issued under this section, see § 37-61-33.

Conditions for closing schools by boards of trustees, see §§ 37-65-101 et seq.

Provisions of the "School Asbestos Hazard Elimination Act", see §§ 37-137-1 et seq.

Prohibition against attendance of school by unvaccinated children, see § 41-23-37.

Application of Energy Management Law to property of public school districts, see § 57-39-103.

Roads, driveways and parking areas on school district property, and expenditure of funds for their construction and upkeep, see § 65-7-74.

Research and Practice References—

68 Am Jur 2d, Schools §§ 60 et seq.

78 CJS, Schools and School Districts §§ 119 et seq.

22 Am Jur Pl & Pr Forms (Rev), Schools, Form 165.1 (complaint, petition, or declaration to enjoin expulsion of student who tested positive for AIDS virus); Form 169 (answer, defense, failure to exhaust administrative remedies following expulsion of student); Form 170 (answer, defense, school district providing home teaching to AIDS infected student pending determination whether student's attendance at school would be danger to others); Forms 171, 172 (answer, defense, school district providing home teaching to expelled student at request of parent).

16A Am Jur Legal Forms 2d (Rev), Schools § 229.79 (Board resolution adopting policies, rules, and regulations for district).

1984 Mississippi Supreme Court Review: Corporate, Contract and Commercial Law. 55 Miss LJ 65, March, 1985.
1985 Mississippi Supreme Court Review—Administrative Law. 55 Miss L J 735, December 1985.
Aids in the Classroom. 58 Miss L J 349, Fall 1988.
Dill, Education law abstract: a survey of prominent issues in Mississippi's public schools. 13 Miss C L Rev 337 (Spring, 1993).

Annotations—

Use of public school premises for religious purposes during nonschool time. 79 ALR2d 1148.
Physical or mental illness as basis of dismissal of students from school, college, or university. 17 ALR4th 519.
Validity, construction, and effect of provision releasing school from liability for injuries to students caused by interscholastic and other extracurricular activities. 85 ALR4th 344.
Application of requirement that newspaper be locally published for official notice publication. 85 ALR4th 581.

JUDICIAL DECISIONS

Where the minutes showed that the board of trustees of a school district at a meeting for the purpose of choosing teachers for the following school term selected petitioner, along with others, as teachers, and that the board would require teachers without degrees to take summer work towards them, but did not indicate that this provision was a condition precedent or subsequent to the employment contract of the teachers so elected, failure of petitioner to attend summer school did not automatically invalidate her contract, and the board of trustees could only remove her under the provisions of § 26, chapter 20, Laws of 1953, extraordinary session (Code 1942, § 6286-26). Cheatham v Smith (1957) 229 Miss 803, 92 So 2d 203.

In the construction and erection of elementary and junior high schools and the preparation of school grounds, trustees of the city municipal separate school district were exercising power conferred upon them by the Constitution and the legislature, and were not agents of the city. Harrell v Jackson (1957) 229 Miss 815, 92 So 2d 240.

A school board has the authority to employ and fix the duties and compensation of non-instructional personnel. Yarbrough v Camphor (1994, Miss) 645 So 2d 867, reh den (1994, Miss) 1994 Miss LEXIS 662.

A school board's posting of a performance bond for the benefit of a private construction company in connection with its job training program was an illegal expenditure; by posting a performance bond as guarantor for a private company, the school board far exceeded its statutory authority to conduct vocational education training, and therefore personal liability for the illegal expenditure would be imposed on board members. Smith v Dorsey (1992, Miss) 599 So 2d 529.

A school board's expenditures of $21,548.92 to pay campaign workers to promote passage of a bond referendum for new school buildings and $945.03 for lunch for poll workers on election day constituted illegal expenditures since a school district is without explicit or implicit statutory authority to expend taxpayer funds in a promotional effort for the passage of a bond referendum; neither §§ 37-59-1 et seq., which is devoted to school bonds and obligations, nor § 37-7-301(d), which empowers local school districts to construct schools, authorize a school board to spend public funds to promote passage of a bond issue, and therefore board members who voted affirmatively for the advertising budget from which the expenditures were made would be personally liable for the illegal expenditures. Smith v Dorsey (1992, Miss) 599 So 2d 529.

A public school board had the authority to consolidate schools within its district and to reassign students en masse; the plan was not a "reorganization of the school district" within the meaning of § 37-7-105. Section 37-7-105 and its petition, publication and referendum procedures do not apply to everything the school board may wish to abolish, alter or reorganize. The statute applies only where the school board "abolishes, alters or reorganizes a school district." The phrase "school district" imports the geographic boundaries of the district and perhaps the corporate organization or structure thereof. The schooi board's plan did not alter the existing structure of the school district, which remained a county-wide district, and did not reorganize corporate structure, and therefore §§ 37-7-103 and 37-7-105 did not apply. Petition of 2,952 Registered Voters (1990, Miss) 574 So 2d 619.

A denial of a list of witnesses does not always amount to a prejudicial denial of due process, particularly where student witnesses in a school disciplinary proceeding are involved, since a school board has not been given the power of subpoena. However, school boards should be especially sensitive to the right of students to know the complete nature of the charges, especially where charges of misconduct are denied and proof is based solely on testimony of other students. Although confrontation may not be an absolute necessity—or even advisable—in every case, written statements should ordinarily be provided. Findings of fact should be made, especially where there are multiple allegations. School boards should take note that although courts should not become involved in running schools, expulsion and suspension are severe sanctions requiring solemn attention to a pupil's rights. Jones v Board of Trustees (1988, Miss) 524 So 2d 968.

Notice procedure set forth in Leasing Act is constitutionally adequate, since it is reasonably calculated, under all circumstances, to apprise interested parties of pendency of action and afford them opportunity to present objections. Cox v Jackson Municipal Separate School Dist. (1987, Miss) 503 So 2d 265.

A high school sophomore who, along with a schoolmate, drank 2 or 3 sips of beer at her home before leaving for school was denied procedural due process when, despite there being no school board rule prohibiting the drinking of beer by students at home, the school board took away all her school credits for the semester as punishment for drinking the beer, and, again, where procedures for a de novo hearing before the school board were ignored. Warren County Bd. of Education v Wilkinson (1986, Miss) 500 So 2d 455.

As matter of state substantive due process, school board's disciplinary rule or scheme is constitutionally enforceable where, fairly viewed, it furthers substantial legitimate interest of school district; authority vested in school boards consistent with constitutional limitation includes substantial discretion with respect to administration of punishment to student who violates school rule. Clinton Municipal Separate School Dist. v Byrd (1985, Miss) 477 So 2d 237.

A school district was expressly and impliedly, both by statute and case law, authorized to file and pursue a claim for damages resulting from the alleged faulty construction of a school building against the contractor, the architect, the bonding company, the subcontractors, and the furnishers of building materials, under § 11-45-11, since the district had responsibility for the erection, repairing and equipping of school facilities pursuant to § 37-7-619, and since § 7-5-1 did not require that the action be brought by the Attorney General, in that the subject matter of the allegations was an isolated contract and its alleged breach resulting in a defective school roof, which was hardly a matter of state-wide interest. Grenada Municipal Separate School Dist. v Jesco, Inc. (1984, Miss) 449 So 2d 226.

A municipal separate school district may bring suit for alleged damages resulting from the alleged faulty construction of a district's school building against the contractor, the architect, the bonding company, the sub-contractors, and the furnishers of building materials. Grenada Municipal Separate School Dist. v Jesco, Inc. (1984, Miss) 449 So 2d 226.

A rule promulgated by a school principal, pursuant to authority delegated to the principal by the board of trustees to decide whether "a student's hair is too long," that male students should not wear their hair longer than two inches above the eyebrows, had a rational basis to prevent disruption of the atmosphere of learning and was not an improper invasion of family privacy. Shows v Freeman (1969, Miss) 230 So 2d 63.

High school principal's deletion from school-sponsored student newspaper of pages containing articles he reasonably considered objectionable did not violate student's First Amendment rights. Hazelwood School Dist. v Kuhlmeier (1988) 484 US 260, 98 L Ed 2d 592, 108 S Ct 562, 14 Media L R 2081.

§ 37-7-303. Insurance on school property.

(1) The school board of any school district may insure motor vehicles and shall insure the school buildings, equipment and other school property of the district against any and all hazards that the board may deem necessary to provide insurance against. The cost of such insurance shall be paid out of any school funds of the district other than minimum education program funds. Such school board shall be authorized to contract for such insurance for a term of not exceeding five (5) years and to obligate the district for the payment of the premiums thereon. When necessary, the school board is authorized and empowered, in its discretion, to borrow money payable in annual installments for a period of not exceeding five (5) years at a rate of interest not exceeding eight percent (8%) per annum to provide funds to pay such insurance premiums. The money so borrowed and the interest thereon shall be payable from any school funds of the district other than minimum education program funds. The school boards of school districts are further authorized and empowered, in all cases where same may be necessary, to bring and maintain suits and other actions in any court of competent jurisdiction for the purpose of collecting the proceeds of insurance policies issued upon the property of such school district.

(2) Two (2) or more school districts, together with other educational entities or agencies, may agree to pool their liabilities to participate in a group workers' compensation program. The governing authorities of any school board or other educational entity or agency may authorize the organization and operation of, or the participation in such a group self-insurance program with other school boards and educational entities or agencies, subject to the requirements of Section 71-3-5. The Workers' Compensation Commission shall approve such group self-insurance programs subject to uniform rules and regulations as may be adopted by the commission applicable to all groups.

SOURCES: Codes, 1942, § 6328-26; Laws, 1953, Ex Sess, ch. 17, § 6; 1960, ch. 370; 1986, ch. 492, § 10; 1993, ch. 562, § 2, eff from and after passage (approved April 15, 1993).

Cross references—
Placing of insurance on county property by county board of supervisors, see § 19-7-7.
Liability insurance on school motor vehicles, see § 37-7-304.
Liability insurance to cover official actions of public school boards of education, see § 37-7-319.
Giving of rewards in cases of destruction of state-supported school buildings, see § 83-1-35.

Research and Practice References—
68 Am Jur 2d, Schools § 73.

§ 37-7-333. Authority of school board of school district as to control of funds; reports of tax collector; deposit of funds; records.

The school boards of all school districts shall have full control of the receipt, distribution, allotment and disbursement of all funds which may be provided for the support and maintenance of the schools of such district whether such funds be minimum education program allotments, funds derived from supplementary tax levies as authorized by law, or funds derived from any other source whatsoever except as may otherwise be provided by law for control of the proceeds from school bonds or notes and the taxes levied to pay the principal of and interest on such bonds or notes. The tax collector of each county shall make reports, in writing, verified by his affidavit, on or before the twentieth day of each month to the superintendent of schools of each school district within such county reflecting all school district taxes collected by him for the support of said school district during the preceding month. He shall at the same time pay over all such school district taxes collected by him for the support of said school district directly to said superintendent of schools.

All such allotments or funds shall be placed in the depository or depositories selected by the school board in the same manner as provided in Section 27-105-305 for the selection of county depositories. Provided, however, the annual notice to be given by the school board to financial institutions may be given by the school board at any regular meeting subsequent to the board's regular December meeting but prior to the regular May meeting. The bids of financial institutions for the privilege of keeping school funds may be

received by the school board at some subsequent meeting, but no later than the regular June meeting; and the selection by the school board of the depository or depositories shall be effective on July 1 of each year. School boards shall advertise and accept bids for depositories, no less than once every three (3) years, when such board determines that it can obtain a more favorable rate of interest and less administrative processing. Such depository shall place on deposit with the superintendent of schools the same securities as required in Section 27-105-315.

SOURCES: Laws, 1986, ch. 492, § 22, eff from and after July 1, 1987; 1991, ch. 534, § 2; 1992, ch. 409, § 1; 1995, ch. 422, § 1, eff from and after passage (approved March 15, 1995).

Editor's Note—

Laws, 1990, Chapter 589, § 12, amended this section effective July 1, 1990, provided that the Legislature by concurrent resolution adopted by the House and Senate in session prior to July 1, 1990, declared that sufficient funds were dedicated and made available for the implementation of Chapter 589. Funds, however, were not made available by the Legislature prior to July 1, 1990, and by direction of the Office of the Attorney General of the State of Mississippi the amendatory provisions have not been printed in this volume. Text of the amendment can be found in the Advance Sheet Acts of the 1990 Legislative Session published by the Secretary of State's Office, Jackson, Mississippi.

ARTICLE 9

ACQUISITION AND DISPOSITION OF DISTRICT PROPERTY

DISPOSITION OF PROPERTY NOT NEEDED FOR SCHOOL PURPOSES; ADDITIONAL METHOD

SEC.

37-7-473. Persons to whom property may be disposed; authorized uses.

§ 37-7-473. Persons to whom property may be disposed; authorized uses.

School buildings, land, property and related facilities may be sold, conveyed, leased or otherwise disposed of under sections 37-7-471 to 37-7-483, to any group of persons, to any association, club or corporation, or to any county, municipality or other political subdivision, to be used as a civic, community, recreational or youth center, or to be used by any county or district fair association in connection with its activities, or to be used for church purposes, or to be used as a library or other public building, or to be used as a factory or otherwise in connection with an industrial enterprise, or to be used for any similar or related purpose or activity.

SOURCES: Codes, 1942, § 6328-104; Laws, 1958, ch. 596, § 4, eff from and after passage (approved May 6, 1958).

Cross references—

Provisions of the Emergency School Leasing Authority Act of 1986 which exempt certain transfers of property from the requirements of this article, see § 37-7-355.

Authority conferred by sections 37-7-471 through 37-7-483 applicable to sale, etc. of relocatable classrooms, see § 37-7-471.

Research and Practice References—

68 Am Jur 2d, Schools § 75.

JUDICIAL DECISIONS

Deeds executed by the trustees of a school district which has been merged with another, of school house property, are ineffective. McInnis v Board of Education (1961) 242 Miss 412, 135 So 2d 180.

In view of the statutory authorization of the use of school buildings for civic and community purposes, the title to land acquired for a school building does not revert to the grantor upon the discontinuance of school uses, where the building is used as a community center and voting place. McGee v Chickasaw County School Board (1960) 239 Miss 5, 120 So 2d 778.

CHAPTER 9

District Superintendents, Principals, Teachers, and Other Employees

IN GENERAL

SEC.
37-9-16. Powers and duties of county administrative superintendent of education.
37-9-75. Prohibition on strikes by teachers; definitions; penalties; injunctive relief; bar to reemployment.

§ 37-9-16. Powers and duties of county administrative superintendent of education.

(1) The administrative superintendent of education for any county shall have the following powers, authority and duties under the government of the county board of education:

(a) To enter into employment contracts in the manner provided by law with noncertificated personnel for the purpose of maintaining an office.

(b) To examine all monthly reports submitted by superintendents of school districts and transportation staff.

(c) To preserve all reports required by law, and to deliver to his successor or clerk of the board of supervisors all money, property, books, effects and papers.

(d) To keep an accurate record of the names of all of the members of the school board showing the districts for which each was elected or appointed, the post office address of each, and the date of the expiration of his term of office. All official correspondence shall be addressed to the school board and notice to such members shall be regarded as notice to the residents of the district and it shall be the duty of the members to notify such residents.

(e) To make to the school board reports for each scholastic month in such form as the school board may require.

(f) To distribute promptly all reports, letters, forms, circulars and instructions which he may receive for the use of school officials.

(g) To keep on file and preserve in his office all appropriate information concerning the affairs of his office.

(h) To observe such instructions and regulations as the school board and other public officials may prescribe, and to make special reports to these officers whenever required.

(i) To keep his office open for the transaction of business upon the days and during the hours to be designated by the school board.

(j) To make such reports as are required by the State Board of Education.

(k) To keep in his office and carefully preserve the public school record provided, to enter therein the proceedings of the school board and his decision upon cases and his other official acts.

(l) To manage the leasing of all sixteenth section land located within the county.

(m) To manage all transportation funds and supervise the transportation of eligible pupils within the county.

(n) To implement the decisions of the county board of education.

(o) To function as a special accounting officer and treasurer with respect to minimum program funds and lease payments for sixteenth section land. He or his designee shall issue all warrants without the necessity of registration thereof by the chancery clerk. Transactions with the depositories and with the various tax collecting agencies which involve school funds for such school district shall be with the administrative superintendent of schools, or his designee where applicable.

(2) All funds to the credit of any school district which are distributed by an administrative superintendent shall be paid out on pay certificates issued by the administrative superintendent upon order of the school board of said county properly entered upon the minutes thereof, and all such orders shall be supported by properly itemized invoices from the vendors covering the materials and supplies purchased. All such orders and the itemized invoices supporting same shall be filed as a public record in the office of the administrative superintendent for a period of five (5) years. The administrative superintendent shall be liable upon his official bond for the amount of any pay certificate issued in violation of the provisions of this section. The school board shall have the power and authority to direct and cause warrants to be issued against such district funds for the purpose of refunding any amount of taxes erroneously or illegally paid into such fund when such refund has been approved in the manner provided by law.

(3) It shall be the duty of the administrative superintendent of schools to keep and preserve the minutes of the proceedings of the school board.

(4) The administrative superintendent of schools shall maintain as a record in his office a book or a computer printout in which he shall enter all demands, claims and accounts paid from any funds of the school district. Said record shall be in a form to be prescribed by the State Auditor. All demands, claims and accounts filed shall be preserved by the administrative superintendent of schools as a public record for a period of five (5) years. All claims found by the school board to be illegal shall be rejected or disallowed. All claims which are found to be legal and proper shall be allowed and ratified as paid by the administrative superintendent. All claims as to which a continuance is requested by the claimant and those found to be defective but which may be perfected by amendment shall be continued. The administrative superintendent of schools shall issue a pay certificate against any legal and proper fund of the school district in favor of the claimant in payment of claims. The provisions of this section, however, shall not be applicable to the payment of teachers' salaries, salaries of drivers of publicly owned school buses, travel advances, amounts due private contractors, or other obligations where the amount thereof has been previously approved by a contract or by an order of the school board entered upon its minutes, or by inclusion in the current fiscal year budget, and all such amounts may be paid by the administrative superintendent of schools by pay certificates issued by him against the legal and proper fund without allowance of a specific claim therefor as provided in this section, provided that the payment thereof is otherwise in conformity with law.

(5) The powers and duties of the administrative superintendent as prescribed in this section shall be exclusive and shall be the sole authority for all actions of such administrative superintendents.

(6) All administrative superintendents shall, on or before the tenth day of each month, prepare and file school district financial statements with the superintendent of each consolidated school district within such county. The State Department of Audit shall prescribe the financial information to be made available in such monthly report and shall provide forms for this purpose. If any administrative superintendent shall willfully fail to comply with the requirements of this subsection, such person shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine not exceeding One Thousand Dollars ($1,000.00) or by imprisonment for a term not exceeding six (6) months, or both.

(7) The State Board of Education shall report to the Legislature on or before January 7, 1990, with recommendations on a transition procedure to ensure an orderly closure of the offices of administrative superintendents. Said recommendations shall include a plan for the transfer of personnel, records, equipment, office space and funds upon the closure of said office of administrative superintendent in such counties.

(8) This section shall stand repealed from and after January 1, 1992.

SOURCES: Laws, 1986, ch. 492, § 62; 1987, ch. 307, § 9, eff from and after passage (approved March 3, 1987), and shall stand repealed from and after January 1, 1992.

Editor's Note—

Section 7-7-2, as added by Laws, 1984, chapter 488, § 90, and amended by Laws, 1985, chapter 455, § 14, Laws 1986, chapter 499, § 1,provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws, 1989, chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear; Subsequently, Laws, 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross references—
Applicability of this section to Uniform School Law, see § 37-6-3.

Annotations—
Sufficiency of notice of intention to discharge or not to rehire teacher, under statutes requiring such notice. 52 ALR4th 301.

§ 37-9-75. Prohibition on strikes by teachers; definitions; penalties; injunctive relief; bar to reemployment.

(1) For purposes of this section:

(a) "Strike" means a concerted failure to report for duty, a willful absence from one's position, the stoppage of work, a deliberate slowing down of work, or the withholding, in whole or in part, of the full, faithful and proper performance of the duties of employment, for the purpose of inducing, influencing or coercing a change in the conditions, compensation, rights, privileges or obligations of public employment; provided, however, that nothing herein shall limit or impair the right of any certified teacher to express or communicate a complaint or opinion on any matter related to the conditions of public employment so long as the same is not designed and does not interfere with the full, faithful and proper performance of the duties of employment.

(b) "Certified teacher" shall mean the following employees of public school districts: classroom teachers, supervisors of programs, librarians, guidance personnel, audiovisual personnel and vocational directors.

(2) It is hereby declared that a strike, concerted work stoppage or concerted refusal to perform lawful duties in any manner by certified teachers against public school districts within the State of Mississippi shall be illegal, unprotected and contrary to the public policy of the State of Mississippi.

(3) No certified teacher, group of certified teachers or teacher organization shall promote, encourage or participate in any strike against a public school district, the State of Mississippi or any agency thereof.

(4) No person exercising any authority, supervision or direction over any certified teacher shall have the power to authorize, approve or consent to a strike by one or more certified teachers, and such person shall not authorize, approve or consent to such strike. No local school governing board or any person exercising authority, supervision or direction over any public school shall attempt to close or curtail the operations of the public school, or to change or alter in any manner the schedule of operations of said school in order to circumvent the full force and effect of this statute. In the event of a strike against the public school, the local school governing board shall continue school operations as long as practicable in order to ascertain which teachers are on strike, and certify the names of such teachers to the Attorney General. Any member of a local school governing board or public school administrator who violates this subsection shall be guilty of a misdemeanor and upon conviction shall be fined not less than One Hundred Dollars ($100.00) nor more than Two Hundred Fifty Dollars ($250.00) for each day such violation continues.

(5) Chancery courts having jurisdiction of the parties are vested with the authority to hear and determine all actions alleging violations of subsection (3) of this section. Suits to enjoin violations of subsection (3) of this section shall have priority over all matters on the court's docket except other emergency matters.

(6) If a certified teacher, a group of certified teachers, a teacher organization, or any officer, agent or representative of any teacher organization engages in a strike in violation of subsection (3) of this section, any public school district whose employees are involved or whose employees may be affected by the strike shall file suit to enjoin the strike in the Chancery Court of the First Judicial District of Hinds County, Mississippi, or in the chancery court having proper jurisdiction and proper venue of such actions. The chancery court shall conduct a hearing with notice to all interested parties, at the earliest practicable time. If the complainant makes a prima facie showing that a violation of subsection (3) of this section is in progress or that there is a clear, real and present danger that such a strike is about to commence, the chancery court shall issue a temporary restraining order enjoining the strike. Upon final hearing, the chancery court shall either make the injunction permanent or dissolve it.

(7) If an injunction to enjoin a strike issued pursuant to this section is not promptly complied with, on the application of the complainant, the chancery court shall immediately initiate contempt proceedings against those who appear to be in violation. A teacher organization found to be in contempt of court for violating an injunction against a strike shall be fined up to Twenty Thousand Dollars ($20,000.00) for each such calendar day. The fines so collected shall immediately accrue to the school district and shall be used by it to replace those services denied the public as a result of the strike. Each officer, agent or representative of a teacher

organization found to be in contempt of court for violating an injunction against a teacher organization shall be liable for any damages which might be suffered by a public employer as a result of a violation of the provisions of subsection (3) of this section by the teacher organization or its representatives, officers and agents. The chancery court having jurisdiction over such actions is empowered to enforce judgment against teacher organizations by the attachment or garnishment of organization initiation fees or dues.

(8) If the court, after a hearing on notice, determines that a certified teacher has violated subsection (3) of this section, it shall order the termination of his or her employment by the public school district. No person knowingly violating the provision of said subsection may, subsequent to such violation, be employed or reemployed as a teacher by any public school district in the state unless the court first finds a public necessity therefor.

The provisions of this subsection (8) shall be cumulative and supplemental to any other applicable provision of law.

SOURCES: Laws, 1985, ch. 351, § 31, eff from and after May 1, 1985.

Cross references—

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

Research and Practice References—

48A Am Jur 2d, Labor and Labor Relations § 1769.

68 Am Jur 2d, Schools § 175.

78 CJS Schools and School Districts § 227.

22 Am Jur Pl & Pr Forms (Rev), Schools, Form 144.2 (complaint, petition, or declaration—by school district—against union of public school teachers— for damages incurred as result of strike).

Public Sector Collective Bargaining in Mississippi: An Argument for Acceptance, 56 Miss LJ 379, August, 1986.

Annotations—

Applicability of Norris-La Guardia Act and similar state statutes to injunction action by governmental unit or agency. 29 ALR2d 431.

Labor law: Right of public employees to strike or engage in work stoppage. 37 ALR3d 1147.

What constitutes "insubordination" as ground for dismissal of public school teacher. 78 ALR3d 83.

Dismissal of public school teacher because of unauthorized absence or tardiness. 78 ALR3d 117.

Bargainable or negotiable issues in state public employment labor relations. 84 ALR3d 242.

Damage liability of state or local public employees' union or union officials for unlawful work stoppage. 84 ALR3d 336.

What constitutes unfair labor practice under state public employee relations acts. 9 ALR4th 20.

Who are employees forbidden to strike under state enactments or state common-law rules prohibiting strikes by public employees or stated classes of public employees. 22 ALR4th 1103.

Damages liability of union or its members in suit under 29 USCS § 185 for breach of express or implied no-strike obligation of collective bargaining agreement—federal cases. 68 L Ed 2d 884.

JUDICIAL DECISIONS

Statute declaring strikes by public school teacher employees illegal and contrary to public policy of state rendered moot issues related to strike, such as restraining orders, temporary or permanent injunctions, and declaratory judgments, as absolute prohibition against all teacher strikes. Mississippi Asso. of Educators v Trustees of Jackson Municipal Separate School Dist. (1987, Miss) 510 So 2d 123.

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CHAPTER 11

General Provisions Pertaining to Education

SEC.
37-11-11. Furnishing public school instruction for hospitalized children.

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§ 37-11-11. Furnishing public school instruction for hospitalized children.

(1) For the purposes of this section, the term "hospital" shall include community-based programs and facilities licensed or approved by the Department of Mental Health for treatment of chemical substance use and abuse.

(2) When five (5) or more children of educable mind between the ages of six (6) and twenty-one (21) years who are capable of pursuing courses of instruction at secondary school level or below shall be confined in a hospital for an extended period of time, such children shall be eligible for and shall be provided with a program of education, instruction and training within such hospital in the manner hereinafter set forth, provided that the need for hospitalization for an extended period of time shall be certified by the chief of staff of such hospital and that the ability of such children to do school work shall be certified by qualified psychologists and/or educators approved by the State Board of Education.

(3) When five (5) or more children as set forth herein shall be confined in the same hospital, then the board of trustees of the school district in which such hospital is located shall be authorized and empowered, in its discretion, to provide a program of education, instruction and training to such children within such hospital. For such purpose the board shall be authorized and empowered to employ and contract with teachers, provide textbooks and other instructional materials, correspondence courses and instructional equipment and appliances, and otherwise provide for the furnishing of such program and to administer and supervise the same. Such program shall be furnished in a manner as prescribed by rules and regulations adopted by the State Board of Education. The state board shall have full power to adopt such rules, regulations, policies and standards as it may deem necessary to carry out the purpose of this section, including the establishment of qualifications of any teachers employed under the provisions hereof. It is expressly provided, however, that no program shall be furnished under this section except in a hospital licensed for operation by the State of Mississippi and only in cases where such hospital shall consent thereto, shall provide any classroom space, furniture and facilities which may be deemed necessary, and otherwise shall cooperate in carrying out the provisions of this section. Before such program of education, instruction and training shall be provided, the governing authorities of said hospital shall enter into a contract with the board of trustees of the school district which stipulates that said hospital agrees to furnish the necessary classroom space, furniture and facilities and provide for their upkeep, fuel and such other things as may be necessary for the successful operation of the program of education, instruction and training.

(4) In cases when children who are residents of school districts other than the school district providing such education program may participate in the program prescribed in this section. The boards of trustees of the districts of which such children are residents shall pay to the board of trustees of the school district furnishing such school program the pro rata part of the expenses of furnishing such school program within such hospital, which payments may be made from any funds available for the operation and maintenance of the schools of the district in which such child is a resident. The amount so paid shall be based upon, but shall not exceed, the current per pupil cost of education in the school district of the child's residence, and the amount to be so paid by the school district of the child's residence shall be fixed by the State Board of Education. If the amount to be paid which has been so fixed shall not be paid upon due demand made by the school district providing a program therefor, then the State Board of Education shall deduct any such amounts from the next allocation of minimum education program school funds attributable to any such district and shall remit the same to the board of trustees of such school district which is furnishing such school program. If the amounts so paid by such school districts of the child's residence shall not be sufficient

to pay the expenses of furnishing such program, then the remainder of such expenses over and above that so paid by such school districts shall be paid by the State Board of Education to the school district providing such school program out of any funds available to the State Board of Education, including minimum education program school funds. However, such payments shall not exceed Three Hundred Dollars ($300.00) per child in average daily attendance in such program. Provided, however, the State Board of Education shall in its discretion be authorized and empowered to exceed the said Three Hundred Dollars ($300.00) per pupil limitation where such limitation would make it impractical to operate such a program.

SOURCES: Codes, 1942, § 6228.3; Laws, 1950, ch. 367, §§ 1-3; 1962, 2d Ex Sess, ch. 21; 1989, ch. 428, § 1, eff from and after July 1, 1989.

CHAPTER 19

Minimum Program of Education

SEC.
37-19-7. Scale of teachers' salaries; experience increases; salary supplement for Master Teachers.
37-19-21. Supportive services.

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§ 37-19-7. Scale of teachers' salaries; experience increases; salary supplement for Master Teachers.

(1) The allowance in the minimum education program for teachers' salaries in each county and separate school district shall be determined and paid in accordance with the scale for teachers' salaries as provided in this subsection for the number of teachers employed not in excess of the number of teacher units allotted. For teachers holding the following types of certificates or the equivalent as determined by the State Board of Education, the scale shall be as follows:

1995-1996 School Year and School Years Thereafter

AAAA	$22,900.00
AAA	22,050.00
AA	21,200.00
A	20,150.00

It is the intent of the Legislature that any state funds made available for salaries of certificated personnel in excess of the funds paid for such salaries for the 1986-1987 school year shall be paid to certificated personnel pursuant to a personnel appraisal and compensation system implemented by the State Board of Education. The State Board of Education shall have the authority to adopt and amend rules and regulations as are necessary to establish, administer and maintain the system. For the purposes of this paragraph, "certificated personnel" means the following employees of public school districts: classroom teachers, superintendents, assistant superintendents, principals, assistant principals, supervisors of programs, librarians, guidance personnel, audiovisual personnel, vocational directors and school psychologists/psychometrists.

All teachers employed on a full-time basis shall be paid a minimum salary in accordance with the above scale. However, no school district shall receive any funds under this section for any school year during which the local supplement paid to any individual teacher shall have been reduced to a sum less than that paid to that individual teacher for performing the same duties from local supplement during the immediately preceding school year. The amount actually spent for the purposes of group health and/or life insurance shall be considered as a part of the aggregate amount of local supplement but shall not be considered a part of the amount of individual local supplement.

For teachers holding a Class AAAA certificate, the minimum base pay specified in this subsection shall be increased by the sum of Five Hundred Eighty Dollars ($580.00) for each year of teaching experience possessed by the person holding such certificate until such person shall have twenty-two (22) years of teaching experience.

For teachers holding a Class AAA certificate, the minimum base pay specified in this subsection shall be increased by the sum of Five Hundred Thirty Dollars ($530.00) for each year of teaching experience possessed by the person holding such certificate until such person shall have twenty-two (22) years of teaching experience.

For teachers holding a Class AA certificate, the minimum base pay specified in this subsection shall be increased by the sum of Four Hundred Seventy-five Dollars ($475.00) for each year of teaching experience

possessed by the person holding such certificate until such person shall have twenty-two (22) years of teaching experience.

For teachers holding a Class A certificate, the minimum base pay specified in this subsection shall be increased by the sum of Three Hundred Ninety-five Dollars ($395.00) for each year of teaching experience possessed by the person holding such certificate until such person shall have eighteen (18) years of teaching experience.

The level of professional training of each teacher to be used in establishing the salary allotment for the teachers for each year shall be determined by the type of valid teacher's certificate issued to those teachers on or before October 1 of the current school year.

(2) From and after the 1995-1996 school year and beginning with the next school year following the school year in which a teacher meets the standard requirements, any certificated teacher who shall have met the requirements and acquired a Master Teacher certificate from the National Board of Professional Teaching Standards and who is employed by a local school board as a teacher and not as an administrator shall receive a Three Thousand Dollar ($3,000.00) salary supplement in addition to any other compensation to which the teacher may be entitled. The additional compensation shall take effect when the number of subject areas for which the National Board of Professional Teaching Standards' assessment process for certification is sufficient to allow eighty percent (80%) of existing teachers in Mississippi to be eligible to apply for the certification. All such salary supplements shall be paid directly by the State Department of Education to the local school district and shall be in addition to its minimum education program allotments and not a part thereof in accordance with regulations promulgated by the State Board of Education. Local school districts shall not reduce the local supplement paid to any teacher receiving such salary supplement, and the teacher shall receive any local supplement to which teachers with similar training and experience are otherwise entitled.

SOURCES: Former 1972 Code § 37-19-7 [Codes, 1942, § 6248-02; Laws, 1953, Ex Sess ch. 14, § 2; 1954, ch. 269; 1955, Ex Sess ch. 55; 1958, ch. 306, § 2; 1960, ch. 295, § 2; 1962, 2d Ex Sess ch. 20; 1964, ch. 386; 1965, Ex Sess ch. 21; 1966, ch. 400, § 1; 1968, ch. 392, § 2; 1970, ch. 367, § 2; 1971, ch. 363, § 2; 1973, ch. 398, § 1; 1975, ch. 322, § 2] recodified as § 37-19-21 by Laws, 1977, ch. 486, § 11. Former 1972 Code § 37-19-5, subsections (2) and (5) [Codes, 1942, § 6248-02; Laws, 1953, Ex Sess ch. 14, § 2; 1954, ch. 269; 1955, Ex Sess ch. 55; 1958, ch. 306, § 2; 1960 ch. 295, § 2; 1962, 2d Ex Sess ch. 20, § 1; 1964, ch. 386; 1965, Ex Sess ch. 21; 1966, ch. 400, § 1; 1968, ch. 392, § 2; 1970, ch. 367, § 1; 1971, ch. 363, § 2] amended and codified as § 37-19-7 by Laws, 1977, ch. 486, § 4; 1978, ch. 513, § 4; 1979, ch. 484, § 1; 1980, ch. 509, § 1; 1981, ch. 517, § 1; 1982, Ex Sess, ch. 17, § 23; 1985, ch. 351, § 29; 1988, ch. 487, § 1; 1991, ch. 558 § 9; 1992, ch. 524, § 12; 1993, ch. 618, § 1; 1994, ch. 581, § 10; 1995, ch. 617, § 1, eff from and after July 1, 1995.

Editor's Note—

Laws, 1995, ch. 617, § 4, provides as follows:

"SECTION 4. The implementation of this act is subject to the Legislature appropriating funds, from any source, to specifically carry out the purpose of this act. This act shall stand repealed if not funded by the Legislature during the 1995 Regular Session".

The appropriation required by Laws, 1995, ch. 617, § 4, was made by Laws, 1995, House Bill No. 1668.

Cross references—

Applicability of this section to a teacher or administrator entering school system for first time, see § 37-3-2.

Salary to be shown in contract of teacher paid in whole or in part with minimum education program funds, see § 37-9-23.

Compensation of teachers, generally, see §§ 37-9-37 et seq.

Prohibition against school district paying any teacher on the minimum foundation program less than the minimum salary provided in this section, see § 37-19-11.

Research and Practice References—

68 Am Jur 2d, Schools § 144 et seq.

78 CJS, Schools and School Districts § 224.

Public Sector Collective Bargaining in Mississippi: An Argument for Acceptance. 56 Miss LJ 379, August, 1986.

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]

6. Under former § 37-19-5

1.-5. [Reserved for future use.]

6. Under former § 37-19-5

Since the 1953 amendment of Code 1942, § 6248-02, the county superintendent is accountable to the school fund for payments made to teachers in excess of amounts provided by statute, even though he did so in good faith and through honest error. Golding v Latimer (1960) 239 Miss 163, 121 So 2d 615.

Code 1942, §§ 6246-01 et seq., 6247-01 et seq., 6248-01 et seq., and 6274-01 et seq., are in pari materia with Code 1942, §§ 6328-01 et seq. Adams County v State Educational Finance Com. (1956) 229 Miss 566, 91 So 2d 524.

§ 37-19-21. Supportive services.

From and after July 1, 1995, in addition to other funds allowed in this chapter, each school district shall be allotted Four Thousand One Hundred Seventy-nine Dollars ($4,179.00) per teacher unit for use in supportive services.

SOURCES: Former 1972 Code § 37-19-21 [Codes, 1942, § 6248-05; Laws, 1953, 1953, Ex Sess ch. 14, § 5; 1956, ch. 283, § 1; 1973, ch. 395, § 2] recodified as § 37-19-39 by Laws, 1977, ch. 486, § 20. Former 1972 Code § 37-19-7 [Codes, 1942, § 6248-02; Laws, 1953, Ex Sess ch. 14, § 2; 1954, ch. 269; 1955, Ex Sess ch. 55; 1958, ch. 306, § 2; 1960, ch. 295, § 2; 1962, 2d Ex Sess ch. 20; 1964, ch. 386; 1965, Ex Sess ch. 21; 1966, ch. 400, § 1; 1968, ch. 392, § 2; 1970, ch. 367, § 2; 1971, ch. 363, § 2; 1973, ch. 398, § 1; 1975, ch. 322, § 2] amended and recodified as § 37-19-21 by Laws, 1977, ch. 486, § 11; 1978, ch. 513, § 6; 1979, ch. 484, § 2; 1980, ch. 509, § 2; 1981, ch. 517, § 2; 1982, Ex Sess, ch. 17, § 25; 1985, ch. 351, § 30; 1988, ch. 487, § 2, eff from and after July 1, 1988 (See Editor's Note, below); 1991, ch. 558 § 11; 1993, ch. 618, § 2; 1994, ch. 581, § 11; 1995, ch. 617, § 3, eff from and after July 1, 1995.

Editor's Note—

Laws, 1990, Chapter 589, § 17, amended this section effective July 1, 1990, provided that the Legislature by concurrent resolution adopted by the House and Senate in session prior to July 1, 1990, declared that sufficient funds were dedicated and made available for the implementation of Chapter 589. Funds, however, were not made available by the Legislature prior to July 1, 1990, and by direction of the Office of the Attorney General of the State of Mississippi the amendatory provisions have not been printed in this volume. Text of the amendment can be found in the Advance Sheet Acts of the 1990 Legislative Session published by the Secretary of State's Office, Jackson, Mississippi.

Laws, 1995, ch. 617, § 4, provides as follows:

"SECTION 4. The implementation of this act is subject to the Legislature appropriating funds, from any source, to specifically carry out the purpose of this act. This act shall stand repealed if not funded by the Legislature during the 1995 Regular Session".

The appropriation required by Laws, 1995, ch. 617, § 4, was made by Laws, 1995, House Bill No. 1668.

Federal Aspects—

Fair Labor Standards Act, see 29 USCS §§ 201 et seq.

CHAPTER 43

Textbooks

SEC.

37-43-1. Declaration of intent; definition of "board" and "textbook".
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§ 37-43-1. Declaration of intent; definition of "board" and "textbook".

This chapter is intended to furnish a plan for the adoption, purchase, distribution, care and use of free textbooks to be loaned to the pupils in all elementary and high schools of Mississippi.

The books herein provided by the State Board of Education, which shall be the State Textbook Procurement Commission, shall be distributed and loaned free of cost to the children of the free public schools of the state and of all other schools located in the state, which maintain educational standards equivalent to the standards established by the State Department of Education for the state schools as outlined in the Approval Requirements of the State Board of Education for Nonpublic Schools.

Teachers shall permit all pupils in all grades of any public school to carry to their homes for home study, the free textbooks loaned to them, and any other regular textbooks whether they be free textbooks or not.

For the purposes of this chapter, the term "board" shall mean the State Board of Education.

Textbook shall be defined as any medium or manual of instruction which contains a systematic presentation of the principles of a subject and which constitutes a major instructional vehicle for that subject.

SOURCES: Codes, 1942, §§ 6656, 6658; Laws, 1940, ch. 202; 1942, ch. 152; 1944, ch. 149, § 1; 1981, ch. 507, § 2; reenacted, 1983, 1st Ex Sess, ch. 2, § 1; reenacted, 1984, ch. 404, § 1; reenacted, 1985, ch. 395, § 1; reenacted, 1986, ch. 349, § 1; reenacted and amended, 1987, ch. 481, § 2 (See Editor's Note below); 1994, ch. 405, § 1, eff from and after July 1, 1994.

Editor's Note—
Laws, 1987, ch. 481, § 25, amended Section 24, Chapter 349, Laws 1986, by deleting the date for repeal of this section.

Cross references—
Assumption of authority and duties of State Textbook Procurement Commission by State Board of Education, see § 37-43-2.

Research and Practice References—
68 Am Jur 2d, Schools § 287.

79 CJS, Schools and School Districts § 489.
1979 Mississippi Supreme Court Review: Miscellaneous. 50 Miss L J 833, December 1979.

JUDICIAL DECISIONS

1. Validity and construction
2. Taxpayers' suit

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1. Validity and construction

Provision for a state textbook fund and for distribution and lending of free textbooks to the pupils of elementary schools, whether public or private, non-sectarian or sectarian, was not in contravention of the constitutional prohibition against control by any religious or other sect over any part of the school or other educational funds of the state, or the appropriation of any funds toward the support of any sectarian school or any school not conducted as a free school, in view of the facts that the benefits hereunder were directed to the pupils themselves and not to schools as such, in keeping with the state's paramount duty to educate the children thereof, and the fact that the use of the textbook fund constituted no charge against any public school fund, properly so called, not against any trust funds available for particular schools or educational purposes. Chance v Mississippi State Textbook Rating & Purchasing Board (1941) 190 Miss 453, 200 So 706 (action under statute prior to amendment extending its application to high schools).

The privilege of requisition by qualified private or sectarian schools for the loan of such books to its pupils does not place in such schools the "control [of] any part of the school or other educational funds" of the state. Chance v Mississippi State Textbook Rating & Purchasing Board (1941) 190 Miss 453, 200 So 706.

The loaning of free textbooks under a statute so providing irrespective of whether the school was public or private, under circumstances wherein the state retained full control and ownership over such books and their preservation was fostered by the exaction of suitable compensation for their loss or damage, did not constitute a direct or indirect aid to the respective schools which the pupils attended, although school attendance should be compulsory. Chance v Mississippi State Textbook Rating & Purchasing Board (1941) 190 Miss 453, 200 So 706.

The appropriation of funds for the purchase of free textbooks to be distributed and loaned to pupils in elementary schools, including qualified private schools, did not constitute a pledging or loaning of the credit of the state in aid of any person, association, or corporation in contravention of the constitutional prohibition in that respect, in view of the fact that the books belonged to and were controlled by the state, that they were merely loaned to the individual pupils therein designated, that their preservation was fostered by exaction of suitable compensation for their loss or damage, and that the duty of protection through fumigation against contagion by use was assumed by the state. Chance v Mississippi State Textbook Rating & Purchasing Board (1941) 190 Miss 453, 200 So 706.

Free textbooks, like tuition grants directed to students in private schools, are a form of tangible financial assistance benefiting the schools themselves, and the state's constitutional obligation requires it to avoid not only operating the old dual system of racially segregated schools but also providing tangible aid to schools that practice racial or other invidious discrimination. Norwood v Harrison (1973) 413 US 455, 37 L Ed 2d 723, 93 S Ct 2804, on remand (ND Miss) 382 F Supp 921, supp op (ND Miss) 410 F Supp 133, app dismd (CA5 Miss) 563 F2d 722.

The constitutional infirmity of the Mississippi textbook program is that it significantly aids the organization and continuation of a separate system of private schools which may discriminate if they so desire. Norwood v Harrision (1973) 413 US 455, 37 L Ed 2d 723, 93 S Ct 2804, on remand (ND Miss) 382 F Supp 921, supp op (ND Miss) 410 F Supp 133, app dismd (CA5 Miss) 563 F2d 722.

In reviewing decisions of state textbook purchasing board that private schools are eligible to receive state-owned textbooks, as to those private academies which were established during the wave of massive desegregation orders of federal courts, a prima facie case of racial discrimination arises from proof (a) that the school's existence began close upon the heels of the massive desegregation of public schools within its locale, and (b) that no blacks are or have been in attendance as students and none is or has ever been employed as teacher or administrator at the private school; once plaintiffs have established a prima facie case of racially discriminatory admission policies as to a particular academy, the burden shifts to the school's officials or representatives to rebut an inference of racial disparity. Norwood v Harrison (1974, ND Miss) 382 F Supp 921, supp op (ND Miss) 410 F Supp 133, app dismd (CA5 Miss) 563 F2d 722.

2. Taxpayers' suit

In an action against a state textbook rating and purchasing board to enjoin the members thereof from distributing or loaning free textbooks to pupils of private and sectarian elementary schools, the complainants, describing themselves as adult resident citizens of Forrest County, Mississippi, property owners and tax payers of the state for themselves and all other citizens, property owners and taxpayers of the state similarly situated and of the same class and kind who might desire to, and who were thereby requested, to join in the action, and alleging that the complaint had applied to the attorney general to bring the suit, that he was the only public official authorized to do so, and that such official had not only refused to do so but on the contrary had appeared in the suit as a representative and counsel for one of the defendants, met the requirements of a taxpayers' suit. Chance v Mississippi State Textbook Rating & Purchasing Board (1941) 190 Miss 453, 200 So 706.

§ 37-43-2. State Board of Education to function instead of State Textbook Procurement Commission; related transfer of property and personnel; Textbook Procurement Commission to retain advisory capacity as Mississippi State Textbook Advisory Board.

(1) On July 1, 1987, the State Board of Education shall assume all power, authority, duties and functions of the State Textbook Procurement Commission. All records, personnel, property and unexpended balances of appropriations, allocations or other funds of the State Textbook Procurement Commission shall be transferred to the State Board of Education on July 1, 1987. All such employee transfers shall be in accordance with the rules and regulations of the State Personnel Board. It is the intent of the Legislature that the number of persons employed by the state as a result of the consolidation required by this section shall be reduced where possible, but that such reduction shall result from attrition of employees and not dismissal.

(2) Each officer or agency subject to the provisions of this section is hereby authorized and empowered to

promulgate such rules and regulations not conflicting with this section necessary to accomplish an orderly transition. Each officer or agency subject to this section shall assist, with the fullest degree of reasonable cooperation, any other officer or agency in carrying out the intent and purpose of this section.

(3) All members serving on the Mississippi State Textbook Procurement Commission as it existed under the provisions of Section 37-43-3 prior to June 30, 1987, shall continue to serve in an advisory capacity to the State Board of Education until December 31, 1987. This advisory board shall be known as the "Mississippi State Textbook Advisory Board," and shall assist the State Board of Education in assuming its duties under the provisions of this section and shall provide technical assistance as may be requested. The State Department of Education, from any funds appropriated thereto, shall, upon the request of the State Board of Education, timely pay all sums reasonably required for the operation of the Mississippi State Textbook Advisory Board, including per diem and actual expenses of such board, through December 31, 1987.

SOURCES: Laws, 1987, ch. 481, § 1, eff from and after June 30, 1987.

Cross references—
Statewide personnel system and State Personnel Board, see §§ 25-9-101 et seq.
Membership, authority, and duties of State Board of Education, see §§ 37-1-1 et seq.

Research and Practice References—
68 Am Jur 2d, Schools § 286.

§ 37-43-17. When board members shall be disqualified from voting.

If any person related within the third degree by blood or marriage, as computed by civil law, to any member of the board, or if any person that is associated in any business or partnership with any member of said board, shall be employed in good faith by any school book company, firm, corporation or agent in connection with the adoption of textbooks within this state, the said member of the board so related by blood or marriage, or so associated in business or partnership with such person, shall not vote in the rating and adoption of any school book or books offered by such school book company, firm, corporation or agent for adoption.

SOURCES: Codes, 1942, § 6638; Laws, 1940, ch. 202; 1981, ch. 507, § 10; reenacted 1983, 1st Ex Sess, ch. 2, § 9; reenacted, 1984, ch. 404, § 9; reenacted, 1985, ch. 395, § 9; reenacted, 1986, ch. 349, § 9; reenacted and amended, 1987, ch. 481, § 3, eff from and after June 30, 1987 (See Editor's Note below).

Editor's Note—
Section 25, ch. 481, Laws, 1987, amended Section 24, Chapter 349, Laws 1986, by deleting the date for repeal of this section.

Cross references—
Applicability of provisions of this section to members of textbook rating committees, see § 37-43-21.

§ 37-43-19. Powers and duties of the board.

The board shall have the power and is hereby authorized:

(a) To promulgate rules and regulations for the purchase, care, use, disposal, distribution and accounting for all books to be furnished under the terms of this chapter, and to promulgate such other rules and regulations as may be necessary for the proper administration of this chapter.

(b) To adopt, contract for, and make available for purchase, cash or credit, basal, supplementary or alternative textbooks through twelve (12) grades as provided in the school curriculum, or for any other course that it may add thereto.

(c) To determine the period of contract for rated and adopted textbooks which shall not be for less than four (4) years nor more than five (5) years, with the right of the board, in its discretion, to renew or extend such contract from year to year for a period not exceeding two (2) additional years and to determine the conditions of the approval or forfeiture of a contract and such other terms and conditions as may be necessary and not contrary to law.

(d) To have complete power and authority over additions and amendments to textbooks, advertising for bids and the contents thereof, including auxiliary materials and workbooks, advertising on the protective covers of textbooks, bids and proposals, prices of textbooks, specimen copies, cash deposits, selection and adoption, distribution, fumigation, emergencies, selling to others, return of deposits, forfeiture of deposits, regulations governing deposits, renovation and repair of books, requisition, transportation or shipment of

books, and any other acts or regulations, not contrary to law, that may be deemed necessary for furnishing and loaning free textbooks to the school children, as provided in this chapter.

SOURCES: Codes, 1942, § 6641; Laws, 1940, ch. 202; 1942, ch. 152; 1946, ch. 444, § 2; 1960, ch. 310; 1981, ch. 507, § 11; reenacted 1983, 1st Ex Sess, ch. 2, § 10; reenacted, 1984, ch. 404, § 10; reenacted, 1985, ch. 395, § 10; reenacted, 1986, ch. 349, § 10; reenacted and amended, 1987, ch. 481, § 4 (See Editor's Note below); 1994, ch. 405, § 2, eff from and after July 1, 1994.

Editor's Note—
Laws, 1987, ch. 481, § 25, amended Section 24, Chapter 349, Laws 1986, by deleting the date for repeal for this section.

Cross references—
Assumption of authority and duties of State Textbook Procurement Commission by State Board of Education, see § 37-43-2.

Research and Practice References—
68 Am Jur 2d, Schools §§ 285, 286.
79 CJS, Schools and School Districts §§ 488, 489.

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former law

1.-5. [Reserved for future use.]

6. Under former law

In enacting statute requiring governor to approve schoolbook contractors' bonds, legislature was presumed to have known of supreme court's decisions that a person appointed or elected to an office is not entitled thereto if the public officer required to approve the official bond refuses to approve it. American Book Co. v Vandiver (1938) 181 Miss 518, 178 So 598.

Court could not inquire into governor's reasons for withholding approval of contractors' bonds. American Book Co. v Vandiver (1938) 181 Miss 518, 178 So 598.

Without approval of bond by governor and attorney-general, contractor had no completed contract, and no right to mandamus to compel superintendent of education to send out notice of adoption of books. American Book Co. v Vandiver (1938) 181 Miss 518, 178 So 598.

§ 37-43-21. Textbook rating committee; disposition of sample textbooks; use of monies from annual textbook allotment for purchase of certain textbooks and computer software and repair of textbooks; prices for new textbook purchases.

(1) For the purpose of assisting the board during an adoption, there shall be rating committees in each of the fields in which textbooks are considered for adoption. Each committee shall be composed of seven (7) members. The State Superintendent of Public Education shall appoint four (4) members of each of the committees, each of whom shall be a competent, experienced teacher who is currently teaching in the field in which the textbooks are considered for adoption. The Governor of the State of Mississippi thereupon shall appoint three (3) members of each of said committees, who shall be persons he deems competent to participate in the appraisal of books offered for adoption, in each field, for use in the public schools of this state.

(2) It shall be the duty of said rating committees to appraise the books offered for adoption in each field in which textbooks are offered for adoption and recommend eight (8) books and/or series for each adoption to be made by the board and giving the reasons for or basis of such recommendations. No book shall be recommended which does not receive a majority vote of the members of each committee. Any member dissenting from any majority vote of the committee shall make his appraisal of any book recommended or rejected by the majority of the committee and specify the reasons therefor and make such recommendations as he thinks proper. All appraisals, recommendations, and dissents if any, shall be in writing and filed with the board for its consideration upon the adoption. The travel expenses of such committees shall be reimbursed in the amount as provided in Section 25-3-41 and shall be paid out of the State Textbook Fund. Such rating committees shall be subject to the provisions of Section 37-43-17. The board shall have the power to reject any and all recommendations of the rating committees and to call for further recommendations; in no case shall the board adopt any book not recommended by the rating committees.

(3) Any and all sample textbooks that may be furnished by the publisher thereof as provided by Section 37-43-59 to any member of the board, the Superintendent of Public Education, and any member of a rating committee shall within one (1) year after receipt of same by said member be turned in to the State School Book Depository without cost to the State of Mississippi, and the same shall thereafter be used without any cost to the State of Mississippi in supplying free textbooks to the educable children of the State of Mississippi as now provided by law or shall be sold to the highest bidder by the board with the proceeds immediately deposited in the State Treasury to the credit of the State Textbook Fund.

(4) No state official, state employee, school board member, school superintendent, principal, teacher or any

other individual shall sell or donate sample textbooks furnished them by the State School Book Depository as part of the textbook adoption or selection process. Said individuals and public officials shall not receive payment by the state depository, any publisher or any other company for sample textbooks.

(5) School districts may annually utilize an amount not to exceed twenty-five percent (25%) of its annual textbook allotment from the General Fund for the purchase of developmental, advanced placement and distance learning textbooks; computer software; and used textbooks which have been state-adopted. Textbooks purchased through this provision, with the exception of used textbooks which have been state-adopted, shall be exempt from the rating requirements mandated in Section 37-43-21(2), and all textbooks purchased through this provision shall be exempt from the bid and depository requirements provided in Section 37-43-23, Mississippi Code of 1972. School districts may annually utilize any portion of the said twenty-five percent (25%) textbook allotment designated through this provision for the repair of textbooks; provided, however, that school districts are authorized and encouraged to utilize the Mississippi Department of Corrections bookbinder for the repair of textbooks.

(6) Prices for new textbook purchases shall not be higher than the lowest price at which books are sold anywhere in the United States, after all discounts are allowed.

SOURCES: Codes, 1942, § 6641; Laws, 1940, ch. 202; 1942, ch. 152; 1946, ch. 444, § 2; 1960, ch. 310; 1981, ch. 507, § 12; reenacted 1983, 1st Ex Sess, ch. 2, § 11; reenacted, 1984, ch. 404, § 11; reenacted, 1985, ch. 395, § 11; reenacted, 1986, ch. 349, § 11; reenacted and amended, 1987, ch. 481, § 5; 1989, ch. 585, § 2 (See Editor's Note below); 1991, ch. 568, § 1; 1994, ch. 405, § 3, eff from and after July 1, 1994.

Editor's Note—

Laws, 1987, ch. 481, § 25, amended Section 24, Chapter 349, Laws 1986, by deleting the date for repeal of this section.

Laws, 1989, ch. 585, § 9, provides as follows:

"If any section, paragraph, sentence, clause, phrase or any part of this act is declared to be unconstitutional or void, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no manner affected thereby but shall remain in full force and effect."

Laws, 1990, ch. 589, § 50, amended this section effective July 1, 1990, provided that the Legislature by concurrent resolution adopted by the House and Senate in session prior to July 1, 1990, declared that sufficient funds were dedicated and made available for the implementation of Chapter 589. Funds, however, were not made available by the Legislature prior to July 1, 1990, and by direction of the Office of the Attorney General of the State of Mississippi the amendatory provisions have not been printed in this volume. Text of the amendment can be found in the Advance Sheet Acts of the 1990 Legislative Session published by the Secretary of State's Office, Jackson, Mississippi.

Cross references—

State curriculum committee, see § 37-13-9.

Adoption of petition procedure books or series of books, see § 37-43-31.

Research and Practice References—

68 Am Jur 2d, Schools § 286.

22 Am Jur Pl & Pr Forms (Rev), Schools, Form 202 (complaint, petition, or declaration challenging enactment of restrictive book policy and parental consent scheme requiring parents of all students in class to consent to use of restricted novel before novel may be used in class).

JUDICIAL DECISIONS

Textbook approval committee's rejection of *Mississippi: Conflict and Change,* while not constituting censorship per se, was certainly an impermissible rejection precluding the purchase of such textbook with state funds and evidenced a racially discriminatory purpose on the part of the defendants and accordingly, violated the civil rights statutes, where reasons given by some committee members for rejecting the textbook indicated that race was a motivating factor; those members who did not indicate that race influenced them in their decision also did not indicate any other reason for their rejection, which was a violation of the committee's statutory duty to state the reasons for its recommendation; and the legislative history and background of the textbook statutes also demonstrated racially discriminatory policies as a motivating factor. Loewen v Turnipseed (1980, ND Miss) 488 F Supp 1138.

§ 37-43-23. Bids; prices; distribution of books.

The State Board of Education is hereby authorized, empowered and directed to advertise for and receive sealed bids for textbooks. Bidders shall quote their lowest net wholesale prices, and net exchange prices, f.o.b. Central Depository, Jackson, Mississippi; however, the board may, in its discretion, establish a state depository or depositories or inaugurate any other plan for the distribution of books. Such prices shall not be higher than the lowest price at which books are sold anywhere in the United States, after all discounts are allowed. It is the intent of the Legislature that the price paid for a textbook shall not exceed the lowest price at which the same book, both having the same copyright date, is sold anywhere in the United States after all discounts are allowed. Every contract entered into under the provisions of this section by the board

and any publisher or publishing company shall contain a provision that the publisher covenants and agrees that he is not furnishing under contract executed after the first day of January of the year in which the contract becomes effective, to any state, county or school district in the United States, the textbooks embraced in the contract at a price below the price stipulated therein. At any time that the board may find that any book or books, in either regular or special editions, are being furnished in any other state at a lower price under contract than it is being furnished in Mississippi, the contract shall be forfeited to the state. Any contractor who violates this provision shall return all money paid out for such book or books and also forfeit such book or books to the state, and suit may be brought on the bond of the contractor for all losses sustained.

Successful bidders or contractors shall be required to maintain a depository at a place within the State of Mississippi, to be named by the board, where a stock of books sufficient to meet all reasonable and immediate demands shall be kept. Upon requisition of the board, the depository shall ship books, transportation charges paid, to the various shipping points in Mississippi to be specified by the board. For such service the depository shall make no charge to the board except the actual cost of transportation from the depository to the shipping point designated. The cost of distribution shall not exceed eight percent (8%) of the total appropriation for any fiscal year.

All books furnished the State of Mississippi by contractors under this chapter shall continue to measure up to the same standards as are required in the contract, said standards to include printing, binding, cover boards, mechanical makeup, and any other relevant points as set out in the plans and specifications as fixed by the board. Any contractor of any book or books, who fails to keep said books up to said standards, shall forfeit, not only his contract to the state, but shall return all money paid out for such book or books and also forfeit said books to the state.

SOURCES: Codes, 1942, §§ 6641, 6642; Laws, 1940, ch. 202; 1942, ch. 152; 1946, ch. 444, § 2; 1960, ch. 310; 1981, ch. 507, § 13; reenacted, 1983, 1st Ex Sess, ch. 2, § 12; reenacted, 1984, ch. 404, § 12; reenacted, 1985, ch. 395, § 12; reenacted, 1986, ch. 349, § 12; reenacted and amended, 1987, ch. 481, § 6, (See Editor's Note below); 1988, ch. 466, § 8, eff from and after July 1, 1988.

Editor's Note—

Section 25, ch. 481, Laws, 1987, amended Section 24, Chapter 349, Laws 1986, by deleting the date for repeal of this section.

Cross references—

Textbooks purchased for developmental, advanced placement and distance learning courses exempt from bid and depository requirements of this section, see § 37-43-21.

Selection of books by local districts, see § 37-43-31.

Research and Practice References—

68 Am Jur 2d, Schools § 285.

79 CJS, Schools and School Districts § 491.

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former law

1.-5. [Reserved for future use.]

6. Under former law

In enacting statute requiring governor to approve schoolbook contractors' bonds, legislature was presumed to have known of supreme court's decisions that a person appointed or elected to an office is not entitled thereto if the public officer required to approve the official bond refuses to approve it. American Book Co. v Vandiver (1938) 181 Miss 518, 178 So 598.

Court could not inquire into governor's reasons for withholding approval of contractors' bonds. American Book Co. v Vandiver (1938) 181 Miss 518, 178 So 598.

Without approval of bond by governor and attorney-general, contractor had no completed contract, and no right to mandamus to compel superintendent of education to send out notice of adoption of books. American Book Co. v Vandiver (1938) 181 Miss 518, 178 So 598.

§ 37-43-25. Specimen copies of textbooks, contracts and bonds, and copies of bids shall be retained as public records.

Specimen copies of all textbooks, which have been made the basis of contracts under the provisions of this chapter, clearly marked and identified as such, shall be deposited by the publisher of said books with the State Superintendent of Public Education. Said specimen copies shall be preserved and kept open for inspection by the public.

All contracts and bonds executed under the provisions of this chapter shall be executed in triplicate, one (1) copy for the contractor, one (1) copy to be filed in the Office of the Secretary of State, and one (1) copy to be filed in the office of the State Superintendent of Public Education.

An original of each bid, whether accepted or rejected, shall be filed and preserved in the office of the State Superintendent of Public Education for at least five (5) years.

SOURCES: Codes, 1942, § 6642; Laws, 1940, ch. 202; 1981, ch. 507, § 14; reenacted, 1983, 1st Ex Sess, ch. 2, § 13; reenacted, 1984, ch. 404, § 13; reenacted, 1985, ch. 395, § 13; reenacted, 1986, ch. 349, § 13; reenacted and amended, 1987, ch. 481, § 7, eff from and after June 30, 1987 (See Editor's Note below).

Editor's Note—
Section 25, ch. 481, Laws, 1987, amended Section 24, Chapter 349, Laws 1986, by deleting the date for repeal of this section.

§ 37-43-27. No books shall be purchased from trusts.

No book or books shall be purchased from any person, firm or corporation who is a member of, or connected with, any trust. In the event that it is established that this provision has been violated, the contract shall be forfeited and monies paid out under this contract shall be returned to the state, and all books heretofore purchased under said contract shall be kept by the state or the public school district which purchased the textbooks.

SOURCES: Codes, 1942, § 6644; Laws, 1940, ch. 202; reenacted without change, 1987, ch. 481, § 8, eff from and after June 30, 1987 (See Editor's Note below); 1994, ch. 405, § 4, eff from and after July 1, 1994.

Editor's Note—
Laws, 1987, ch. 481, § 25, amended Section 24, Chapter 349, Laws 1986, by deleting the date for repeal of this section.

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former law

1.-5. [Reserved for future use.]

6. Under former law

The anti-trust law of 1900 has no application to the state or its public agencies in letting a contract for copyrighted schoolbooks in the manner provided by law and as the result of competitive bidding by the terms of which new books are for a time to be exchanged without cost, book for book, in the place of old books then in use, after which the prices agreed on are to be paid for all books furnished during the continuance of the contract. B. F. Johnson Pub. Co. v Mills (1901) 79 Miss 543, 31 So 101.

A public contract for an article below cost is not "inimical to the public welfare" within Const. 1890 § 198. B. F. Johnson Pub. Co. v Mills (1901) 79 Miss 543, 31 So 101.

§ 37-43-29. Designation of secretary of state as contractor's agent.

Any person, firm or corporation with whom a contract has been entered into, under the provisions of this chapter, shall designate the Secretary of State of Mississippi as its agent, upon whom citation and all other writs and processes may be served, in case any suit shall be brought against such person, firm or corporation.

SOURCES: Codes, 1942, § 6647; Laws, 1940, ch. 202; reenacted without change, 1987, ch. 481, § 9, eff from and after June 30, 1987 (See Editor's Note below).

Editor's Note—
Section 25, ch. 481, Laws, 1987, amended Section 24, Chapter 349, Laws 1986, by deleting the date for repeal of this section.

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former law

1.-5. [Reserved for future use.]

6. Under former law

Schoolbook contractor held not required to award agency contract to any applicant giving contract and bond, but had right to select its own agents. Pieri v Sevier (1933) 164 Miss 572, 145 So 97.

Plaintiff held required to procure agency contract before he could secure rights enforceable under statute requiring schoolbook contractor not to give one applicant for selling agency advantage over another. Pieri v Sevier (1933) 164 Miss 572, 145 So 97.

§ 37-43-31. Selection of books by local school districts.

(1) The State Board of Education shall adopt and furnish textbooks only for use in those courses set up in the state course of study as recommended by the State Accreditation Commission and adopted by such board,

or courses established by acts of the Legislature. In all subjects the board, in its discretion, may adopt textbooks and/or series from those recommended by the textbook rating committees. The board may adopt a plan which permits the local school districts to choose the book or books to be requisitioned from those adopted, provided:

(a) That, when a book is furnished by the state, it shall remain in use during the period of its adoption;

(b) That the average per pupil cost of textbooks so furnished any unit shall not exceed that allowed for all other units in the state;

(c) That nothing herein provided shall be construed as giving any school the authority to discard or replace usable copies of textbooks now being furnished by the state;

(d) That the State Department of Education is authorized to disburse the annual textbook appropriation directly to the public school districts in accordance with Section 37-43-31(1)(b). The textbooks procured through this chapter, as well as textbooks which are on hand on June 30, 1994, which were previously purchased through the provisions of this statute, shall become the property of the public school district which purchased them, unless the State Department of Education authorizes the transfer of unneeded textbooks to another location in accordance with rules and regulations promulgated by the State Board of Education;

(e) That textbooks which are on loan to other than public schools as referenced in Section 37-43-1, shall remain the property of the State of Mississippi. All requisitions for textbooks from these schools shall be submitted to the State Department to be processed and subsequently shipped to the requesting school. No funds shall be disbursed directly from the State Department of Education to the schools in this category for the purpose of procuring textbooks; and

(f) That funds made available through this chapter may be used to purchase any state-adopted or non-adopted textbook from any state depository, directly from the publisher, or in accordance with the provisions of Sections 37-43-21(5) and 37-43-31(3). For purchases made directly from the publisher, the public school district, or the State Department of Education when purchasing for other than public schools, shall not pay a higher price for a textbook than that listed on the current state-adopted list.

(2) Whenever any book under contract is displaced by a new adoption, the board may continue to require the schools to use the recently purchased books from any previous adoption; however, such period of use shall not exceed four (4) years.

(3) If five (5) or more school boards petition the State Board of Education to add a book, or a series of books, to the approved list of state adoptions in a given subject area, then the State Superintendent of Public Education shall have sixty (60) days to show cause to the State Board of Education why the books in question should or should not be purchased with state funds. If the petition is not acted upon within the sixty-day period, the petition shall be deemed to be approved. Once a textbook has been approved through the petition process, any public school district or eligible other school may procure the said textbook utilizing funds appropriated through this chapter.

(4) If new and innovative textbooks that would improve a particular course of study become available between adoption cycles, a school board may petition the State Board of Education for permission to purchase these books out of sequence to be paid for with state textbook funds.

(5) The State Board of Education shall not allow previously rejected textbooks to be used if such textbooks were rejected for any of the following reasons:

(a) Obscene, lewd, sexist or vulgar material;

(b) Advocating prejudicial behavior or actions; or

(c) Encouraging acts determined to be anti-social or derogatory to any race, sex or religion.

(6) All books or series of books adopted under the petition procedures of this chapter shall be purchased under the provisions for bidding, pricing and distribution as prescribed in Section 37-43-23.

(7) Petition procedure books or series of books adopted under this section shall be considered only until the date of the next regular adoption series in the applicable subject area. Petition procedure books shall be submitted for formal adoption at the next applicable regular textbook adoption as prescribed under the pro-

visions of Chapter 43, Title 37, Mississippi Code of 1972; otherwise, such books adopted under the petition procedures which do not receive formal adoption approval as recommended by the textbook rating committee shall be dropped from the state textbook petition adoption list. Provided, however, this provision shall in no way prohibit a school district from using other funds, federal or local, for the purchase of such books.

SOURCES: Codes, 1942, § 6646; Laws, 1940, ch. 202; 1942, ch. 152; 1944, ch. 151, § 1; 1950, ch. 382, §§ 1, 2; 1966, ch. 421, § 1; 1981, ch. 507, § 15; reenacted, 1983, 1st Ex Sess, ch. 2, § 14; reenacted, 1984, ch. 404, § 14; reenacted, 1985, ch. 395, § 14; reenacted, 1986, ch. 349, § 14; reenacted and amended, Laws, 1987, ch. 481, § 10 (See Editor's Note below); 1989, ch. 577, § 1; 1994, ch. 405 § 5, eff from and after July 1, 1994.

Editor's Note—
Laws, 1987, ch. 481, § 25, amended Section 24, Chapter 349, Laws 1986, by deleting the date for repeal of this section.

Cross references—
State Accreditation Commission, see §§ 37-17-3 et seq.

Research and Practice References—
68 Am Jur 2d, Schools § 285.
79 CJS, Schools and School Districts §§ 489, 490.
22 Am Jur Pl & Pr Forms (Rev), Schools, Form 202 (complaint, petition, or declaration challenging enactment of restrictive book policy and parental consent scheme requiring parents of all students in class to consent to use of restricted novel before novel may be used in class).

§ 37-43-33. Purchase of books.

Any parent, person or school board in any community of the state may purchase books from the depository who is given authority to sell books under the provisions of this chapter. The price of the books so ordered or brought shall be the same as the contract price, plus whatever postage or delivery charges might accrue.

SOURCES: Codes, 1942, § 6643; Laws, 1940, ch. 202; 1981, ch. 507, § 16; reenacted, 1983, 1st Ex Sess, ch. 2, § 15; reenacted, 1984, ch. 404, § 15; reenacted, 1985, ch. 395, § 15; reenacted, 1986, ch. 349, § 15; reenacted and amended, 1987, ch. 481, § 11 (See Editor's Note below); 1994, ch. 405, § 6, eff from and after July 1, 1994.

Editor's Note—
Laws, 1987, ch. 481, § 25, amended Section 24, Chapter 349, Laws 1986, by deleting the date for repeal of this section.

§ 37-43-37. Numbering of books; covers.

All books shall have a uniform label printed on the inside cover. Each school shall number all books, placing the number on said labels. All teachers shall keep an accurate record of the number and names of all books issued to each pupil.

SOURCES: Codes, 1942, § 6650; Laws, 1940, ch. 202; 1981, ch. 507, § 17; reenacted, 1983, 1st Ex Sess, ch. 2, § 16; reenacted, 1984, ch. 404, § 16; reenacted, 1985, ch. 395, § 16; reenacted, 1986, ch. 349, § 16; reenacted and amended, 1987, ch. 481, § 12, (See Editor's Note below); 1988, ch. 466, § 9, eff from and after July 1, 1988.

Editor's Note—
Section 25, ch. 481, Laws, 1987, amended Section 24, Chapter 349, Laws 1986, by deleting the date for repeal of this section.

§ 37-43-39. School officials and employees may not act as agents or attorneys for textbook publishers.

No teacher in any of the schools of the state, and no county or municipal superintendent of schools, and no person officially connected with the government of or direction of any school shall, during the term of his office as said superintendent or during the time of his or her employment as teacher, act as agent or attorney for any textbook publishing company selling textbooks in this state. If, after election as county or municipal superintendent or employment as teacher, any person filling such position accepts the agency or attorneyship of any textbook publishing company, the acceptance of such agency or attorneyship shall work a forfeiture of the office or position as teacher held at the time of the acceptance of such agency or attorneyship.

SOURCES: Codes, 1942, § 6651; Laws, 1940, ch. 202; reenacted without change, Laws, 1987, ch. 481, § 13, eff from and after June 30, 1987.

Cross references—
Prohibition against school authorities speculating in public school books, furniture, equipment, and the like, see § 37-11-25.

Research and Practice References—
79 CJS, Schools and School Districts § 511.

§ 37-43-41. State Textbook Fund; Local School District Textbook Carryover Fund.

The State Textbook Fund of Mississippi shall consist of the amounts appropriated by the Legislature for the same, all monies accruing from the sale of disused books from other than public schools, all monies derived from the purchase of books by both public and private schools trustees, and by private individuals, all monies collected in damage suits under the terms of this chapter, and all other monies collected in any way whatsoever under the terms of this chapter.

There is hereby created a special fund in the State Treasury to be designated as the "Local School District Textbook Carryover Fund." Said fund shall be credited with any funds which were appropriated by the Legislature to the State Textbook Fund for any fiscal year in which said funds were allocated to local school districts but unexpended by said districts. Said unexpended funds shall be deposited by the board into the Local School District Textbook Carryover Fund to the credit of the local school districts which were originally allocated such funds. All carryover funds which exist on June 30, 1994 which belong to public school districts shall be disbursed to the respective school districts. Carryover funds for other than public schools shall be handled in the same manner as previously described in this section.

SOURCES: Codes, 1942, § 6648; Laws, 1940, ch. 202; 1981, ch. 344, § 1; reenacted and amended, 1987, ch. 481, § 14; 1994, ch. 405 § 7, eff from and after July 1, 1994.

Cross references—
Deposit of funds obtained for lost or damaged books, as well as other funds, into State Textbook Fund, see § 37-43-43.
Payment out of State Textbook Fund of cost of Mississippi Blue Books purchased and distributed for supplementary use in Mississippi schools, see § 37-43-55.

§ 37-43-43. Deposit of funds to credit of State Textbook Fund.

The State Superintendent of Public Education shall deposit all funds sent to him from non-public schools for lost books or damaged books as well as all other funds accruing under this chapter in the State Treasury to the credit of the State Textbook Fund.

SOURCES: Codes, 1942, § 6652; Laws, 1940, ch. 202; 1981, ch. 507, § 18; reenacted, 1983, 1st Ex Sess, ch. 2, § 17; reenacted, 1984, ch. 404, § 17; reenacted, 1985, ch. 395, § 17; reenacted, 1986, ch. 349, § 17; reenacted and amended, 1987, ch. 481, § 15 (see Editor's Note below); 1994, ch. 405, § 8, eff from and after July 1, 1994.

Editor's Note—
Laws, 1987, ch. 481, § 25, amended Section 24, Chapter 349, Laws 1986, by deleting the date for repeal of this section.

Cross references—
State Textbook Fund, see § 37-43-41.

§ 37-43-45. Suits.

Any loss occasioned by the neglect, carelessness or failure of duty by the county superintendent or any principal or teacher in charge of any school, shall entitle the state to bring suit for the recovery of the amount of the loss or losses occasioned thereby.

Any writ or suit of any nature instituted under the provisions of this chapter shall be brought in the name of the State of Mississippi by the Attorney General. Any money or moneys recovered by such suit shall be placed to the credit of the State Textbook Fund.

SOURCES: Codes, 1942, § 6653; Laws, 1940, ch. 202; reenacted without change, 1987, ch. 481, § 16, eff from and after June 30, 1987.

Cross references—
Suits by attorney general generally, see §§ 7-5-37, 7-5-39.

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former law

1.-5. [Reserved for future use.]

6. Under former law

An action by citizens of the state to enjoin the enforcement of, and to declare void, a contract between the state textbook commission as created under previous enactment (Code 1930, § 6791) and a textbook publisher to furnish certain books to be used in a public school for a period of five years, does not involve a separable controversy with the publisher which may be removed from the state to a federal court. Trimble v John C. Winston Co. (1932, CA5 Miss) 56 F2d 150 cert den 286 US 555, 76 L Ed 1289, 52 S Ct 580.

§ 37-43-47. Warrants.

Bills for textbooks purchased by the state on requisitions as provided in this chapter, and bills for all other expenses incurred under the terms of this chapter, shall be paid by warrants on the State Treasury made by the Auditor on receipt of bills from the State Superintendent of Public Education, and approved by the State Board of Education. Bills for textbooks purchased by public school districts, shall be submitted to the respective school district submitting the requisition. Each public school district will make payment to the appropriate entity which is responsible for providing the requested textbooks.

SOURCES: Codes, 1942, § 6649; Laws, 1940, ch. 202; 1981, ch. 507, § 19; reenacted, 1983, 1st Ex Sess, ch. 2, § 18; reenacted, 1984, ch. 404, § 18; reenacted, 1985, ch. 395, § 18; reenacted, 1986, ch. 349, § 18; reenacted and amended, 1987, ch. 481, § 17(see Editor's Note below); 1994, ch. 405, § 9, eff from and after July 1, 1994.

Editor's Note—

Section 7-7-2, as added by Laws, 1984, chapter 488, § 90, and amended by Laws, 1985, chapter 455, § 14, Laws 1986, chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws, 1989, chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws, 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Laws, 1987, ch. 481, § 25, amended Section 24, Chapter 349, Laws 1986, by deleting the date for repeal of this section.

The **1994** amendment added the second and third sentences.

§ 37-43-49. Storage of school books.

It shall be the duty of the board of supervisors of each county in the state to provide adequate storage space in the county courthouse, or in some other building at the county site, for the storage of school books distributed under the provisions of this chapter. In the event sufficient space for the storage of such books cannot be provided in the courthouse, the board of supervisors shall be authorized to rent a room or rooms in some other building at the county site for the storage of such books, and to pay such reasonable rental therefor as may be necessary out of the general fund of the county.

The county superintendent of education, with the approval of the county board of education, may expend out of the county school fund an amount not to exceed One Hundred Fifty Dollars ($150.00) in any school year for part-time janitor's services or other help in the handling, storage and distribution of school books.

SOURCES: Codes, 1942, § 6658-01; Laws, 1946, ch. 464, §§ 1, 2; reenacted without change, 1987, ch. 481, § 18, eff from and after June 30, 1987.

§ 37-43-51. Reports required from non-public schools receiving free textbooks.

The management of all public, private, parochial or denominational schools wherein the board is furnishing to the students thereof free school textbooks and said free school textbooks are used by the students in said school, shall file annually with the State Board of Education any and all reports as may be required by the board.

Any person who shall refuse, neglect or fail to file any report required by the board shall be denied a new allocation of funds until such reports have been completed and filed with the board.

SOURCES: Codes, 1942, § 6658-02; Laws, 1946, ch. 464, §§ 1, 2; 1981, ch. 507, § 20; 1983, 1st Ex Sess, ch. 2, § 19; reenacted, 1984, ch. 404, § 19; reenacted, 1985, ch. 395, § 19; reenacted, 1986, ch. 349, § 19; reenacted and amended, 1987, ch. 481, § 19, eff from and after June 30, 1987 (see Editor's Note below).

Editor's Note—

Section 25, Chapter 481, Laws, 1987, amended Section 24, Chapter 349, Laws 1986, by deleting the date for repeal of this section.

Research and Practice References—
68 Am Jur 2d, Schools §§ 285, 303, 311.
78 CJS, Schools and School Districts § 5.

JUDICIAL DECISIONS

Although a state statute authorizing public school authorities to lend textbooks without charge to children attending nonpublic elementary and secondary schools, including parochial schools, does not violate the establishment of religion clause of the First Amendment, a statute authorizing public school authorities to lend instructional material and equipment, such as maps, charts, films, and projection, recording and laboratory equipment provided free to public schoolchildren to qualifying nonpublic elementary and secondary schools, including parochial schools, constitutes an impermissible establishment of religion in violation of the First Amendment. Meek v Pittenger (1975) 421 US 349, 44 L Ed 2d 217, 95 S Ct 1753, reh den 422 US 1049, 45 L Ed 2d 702, 95 S Ct 2668.

§ 37-43-53. Advertising on covers of textbooks.

The board is hereby authorized, empowered and directed, in its discretion, to offer for advertising purposes, the protective covers of the several free textbooks, to accept bids, and to let contracts for said space. The contracts for said advertising purposes shall be let for definite periods not to exceed two (2) years.

It shall be the duty of the board, if it is desired that advertising shall be used, to approve all proposed advertising submitted for use on the covers of such free textbooks, and to accept only that advertising which will be in keeping with the spirit of the schools in promoting the children physically, mentally and morally. The board is hereby authorized, empowered and directed, in its discretion, to reject any and all bids submitted. No sectarian, un-American or immoral advertisements shall be accepted.

All moneys derived from sale of such advertising shall be deposited in the State Treasury for the benefit of the General Fund.

SOURCES: Codes, 1942, § 6659; Laws, 1940, ch. 194; 1981, ch. 507, § 21; reenacted, 1983, 1st Ex Sess, ch. 2, § 20; reenacted, 1984, ch. 404, § 20; reenacted, 1985, ch. 395, § 20; reenacted, 1986, ch. 349, § 20; reenacted and amended, 1987, ch. 481, § 20, eff from and after June 30, 1987 (see Editor's Note below).

Editor's Note—
Section 25, ch. 481, Laws, 1987, amended Section 24, Chapter 349, Laws 1986, by deleting the date for repeal of this section.

§ 37-43-55. Purchase and distribution of the Mississippi Blue Book.

The board is hereby authorized and empowered to purchase copies of the Mississippi Blue Book for supplementary use in the schools of Mississippi.

The board shall prescribe the number of copies to be furnished each school and shall make any other regulations governing its distribution and use.

The cost of the Mississippi Blue Books purchased and distributed shall be paid for out of the regular appropriation to the State Textbook Fund.

SOURCES: Codes, 1942, § 6659.5; Laws, 1950, ch. 362, §§ 1-3; 1981, ch. 507, § 22; reenacted, 1983, 1st Ex Sess ch. 2, § 21; reenacted, 1984, ch. 404, § 21; reenacted, 1985, ch. 395, § 21; reenacted, 1986, ch. 349, § 21; reenacted and amended, 1987, ch. 481, § 21, eff from and after June 30, 1987 (see Editor's Note below).

Editor's Note—
Section 25, ch. 481, Laws, 1987, amended Section 24, Chapter 349, Laws 1986, by deleting the date for repeal of this section.

§ 37-43-57. Penalty.

Except as may otherwise be provided in this chapter, any person wilfully violating any of the provisions of this chapter shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than Five Hundred Dollars ($500.00) nor more than Five Thousand Dollars ($5,000.00), or by imprisonment not to exceed twelve (12) months in the county jail, or by both, in the discretion of the court.

SOURCES: Codes, 1942, § 6654; Laws, 1940, ch. 202; 1981, ch. 507, § 23; reenacted, 1983, 1st Ex Sess ch. 2, § 22; reenacted, 1984, ch. 404, § 22; reenacted, 1985, ch. 395, § 22; reenacted, 1986, ch. 349, § 22; reenacted without change, 1987, ch. 481, § 22, eff from and after June 30, 1987 (see Editor's Note below).

Editor's Note—
Section 25, ch. 481, Laws, 1987, amended Section 24, Chapter 349, Laws 1986, by deleting the date for repeal of this section.

Cross references—
Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 37-43-59. Samples.

(1) Not more than one (1) pupil copy, one (1) teacher's edition, and one (1) copy of any limited auxiliary materials shall be furnished as samples or specimen copies to any single person involved in the state rating, adoption process of free textbooks. Any and all sample or specimen textbooks or other materials furnished to any person serving in an official capacity or as an officer or employee in a school receiving free textbooks shall be furnished only by the State Board of Education after receipt from the publishers. No samples shall be furnished by publishers directly to any such person. The board shall keep detailed records of all samples furnished to all persons and establish such procedures for return of all samples. The intent of this provision is that no person serving in an official capacity shall receive personal benefit or profit from sale of sample or specimen textbooks.

(2) Not more than one (1) pupil copy, one (1) teacher's edition, and one (1) copy of any limited auxiliary materials shall be furnished for review and inspection to any single person involved in the selection committee process of free textbooks. Any and all textbooks or other materials furnished to any such person serving in a selection committee capacity for inspection and review shall be furnished subject to the rules and regulations adopted by the board which such rules and regulations shall not prohibit direct delivery by the publishers to such persons. The board shall keep detailed records of all textbooks and auxiliary materials furnished to all such persons and establish such procedures for the return thereof. Any and all textbooks furnished to persons serving on selection committees shall be turned in to the State School Book Depository without any cost to the State of Mississippi and shall be credited to the account of the publisher. Any and all textbooks so furnished to persons serving on selection committees which have not been returned within one (1) year of the receipt of same the value thereof shall be charged against the allocation of state funds to said school district to the same extent as if said books had been purchased by said school district. The intent of this provision is that no person serving as a selection committee member shall receive personal benefit or proceeds from the sale of said textbooks.

(3) The State School Book Depository shall pay into the State Treasury to the credit of the State Textbook Fund the net wholesale price less an eight percent (8%) distribution cost and freight charges of those adopted textbooks which are returned by the rating committees as required herein. The board shall also provide for the sale of damaged books and those textbooks not adopted into the secondary textbook market on an annual basis. The State School Book Depository shall pay into the State Treasury to the credit of the State Textbook Fund the amount received for which said textbooks are sold less an eight percent (8%) distribution cost and freight charges of said textbooks which are damaged or not adopted.

(4) Any person converting to personal use or selling any sample or specimen textbook or other materials contrary to provisions of this section shall be guilty of the crime of embezzlement as provided by Section 97-11-25 and in addition shall upon conviction pay a fine of Fifty Dollars ($50.00) per book sold or converted to personal use and shall be removed from any public office or public employment position held.

SOURCES: Laws, 1981, ch. 507, § 24; reenacted, 1983, 1st Ex Sess ch. 2, § 23; reenacted, 1984, ch. 404, § 23; 1984, ch. 488, § 199; reenacted, 1985, ch. 395, § 23; reenacted, 1986, ch. 349, § 23; reenacted and amended, 1987, ch. 481, § 23, eff from and after June 30, 1987 (see Editor's Note below).

Editor's Note—
Section 341, ch. 488, Laws, 1984, provides as follows:
"Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."
Section 25, ch. 481, Laws, 1987, amended Section 24, Chapter 349, Laws 1986, by deleting the date for repeal of this section.

Cross references—
Other provisions governing disposition or use of sample textbooks, see § 37-43-21.

CHAPTER 47

State Aid for Construction of School Facilities

SEC.
37-47-5. "Capital improvement" defined.

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§ 37-47-5. "Capital improvement" defined.

For the purposes of this chapter, the term "capital improvement" shall mean the cost of (1) erecting, repairing, equipping, remodeling and enlarging school buildings and related facilities, including, but not being limited to, gymnasiums, auditoriums, lunch rooms, vocational training buildings, libraries, teachers' homes, school barns, garages for transportation vehicles, and (2) providing necessary water, lights, heating, air conditioning and sewerage facilities for school buildings. Such term shall not include the cost of the acquisition of land whereon to construct or establish any of the facilities named above.

SOURCES: Codes, 1942, § 6247-04; Laws, 1953, Ex Sess, ch. 13, § 4; 1992, ch. 524, § 15, eff from and after July 1, 1992.

Editor's Note—

Laws, 1990, Chapter 588, § 74, repealed this section effective July 1, 1990, provided that the Legislature by concurrent resolution adopted by the House and Senate in session prior to July 1, 1990, declared that sufficient funds were dedicated and made available for the implementation of Chapter 588. Funds, however, were not made available by the Legislature prior to July 1, 1990, and by direction of the Office of the Attorney General of the State of Mississippi, the repeal of this section has not been implemented.

CHAPTER 55

School Libraries

SEC.
37-55-1. County library commission.
37-55-3. Grants of aid to school libraries from school funds.
37-55-5. Appropriations by county boards of supervisors for support of libraries.

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§ 37-55-1. County library commission.

The county superintendent of education shall name two first grade teachers who, together with the county superintendent, shall constitute a county library commission. It shall be the duty of this commission to name a list of books suited for school libraries, and all books purchased under this chapter shall be selected from this list. It shall be the duty of this commission to make rules and regulations to govern and control the use of such libraries in the county, and the commission shall name a local manager of each library who shall make a report every year to the county commission of all books purchased during the year, of the money on hand at the time of the report, together with the amount expended for library purposes. The county superintendent shall keep a list of books purchased by the several libraries of his county and make a library report to the state superintendent of education annually with the county school report.

SOURCES: Codes, 1930, § 6787; 1942, § 6630; Laws, 1924, ch. 283; 1930, ch. 278; 1970, ch. 386, § 1, eff from and after July 1, 1970.

Cross references—
Duties of state library commission, see § 39-3-107.

Research and Practice References—
78 CJS, Schools and School Districts § 269.

§ 37-55-3. Grants of aid to school libraries from school funds.

When any public free school in this state shall raise not less than ten dollars by subscription or otherwise for a library for such school, and shall furnish suitable bookcases with lock and key, the superintendent of education of the county where such subscription is raised may issue his certificate for a like amount not exceeding twenty-five dollars in favor of such school, to be paid out of the common school fund of that county. In no case shall the amount given by the county in any one year exceed two hundred and fifty dollars. No school shall receive a second donation from the school fund for library purposes so long as there are any new applications from schools that have not been supplied.

SOURCES: Codes, 1930, § 6786; 1942, § 6629; Laws, 1924, ch. 283; 1930, ch. 278.

Cross references—
Exemption of public library property from state, county and municipal taxation, see § 27-31-21.
County and municipal taxes for support of free public libraries, see §§ 39-3-5, 39-3-7.
Establishment and maintenance of free public libraries generally, see § 39-3-1.
Funds for establishment and maintenance of free public libraries, see § 39-3-3.
Regional libraries, see § 39-3-9.

Research and Practice References—
78 CJS, Schools and School Districts § 269.

§ 37-55-5. Appropriations by county boards of supervisors for support of libraries.

The board of supervisors of any county is authorized, in its discretion, to appropriate a sum not to exceed three thousand dollars per annum towards the support of public libraries, including circulating school libraries, in said county.

In counties where the enumeration of educable children is shown by the most recent census to be 10,000

or more, the board of supervisors may, in its discretion, appropriate an amount not to exceed ten thousand dollars annually, towards the support of public or school libraries.

SOURCES: Codes, 1930, § 6788; 1942, § 6631; Laws, 1930, ch. 278.

Cross references—

Funds for establishment and maintenance of free public libraries, see § 39-3-3.

County taxes for support of free public libraries, see § 39-3-5.

CHAPTER 59

School Bonds and Obligations

ARTICLE 1

AUTHORITY TO ISSUE BONDS, NOTES AND CERTIFICATES OF INDEBTEDNESS

SEC.
37-59-3. Purposes for which bonds may be issued.

§ 37-59-3. Purposes for which bonds may be issued.

The school board of any school district is authorized to issue negotiable bonds of such school district to raise money for the following purposes:

(a) Purchasing, erecting, repairing, equipping, remodeling and enlarging school buildings and related facilities, including gymnasiums, auditoriums, lunch rooms, vocational training buildings, libraries, teachers' homes, school barns, transportation vehicles and garages for transportation vehicles, and purchasing land therefor.

(b) Establishing and equipping school athletic fields and necessary facilities connected therewith, and purchasing land therefor.

(c) Providing necessary water, light, heating, air conditioning and sewerage facilities for school buildings, and purchasing land therefor.

(d) Paying part of the costs to be incurred in erecting, repairing, equipping, remodeling and enlarging school buildings and related facilities which are owned and operated by state-supported institutions of higher education as a demonstration or practice school attended by pupils, grades, or one or more, or parts of grades from the educable children of such school district pursuant to a contract or agreement between said institution and said school district.

The authority to issue the bonds hereinabove set forth shall include the authority for the school board of such school district to spend the money for the purposes for which said money is raised.

SOURCES: Codes, 1942, § 6532-01; Laws, 1950, ch. 231, § 1; 1955, Ex Sess, ch. 61; 1986, ch. 492, § 168; 1987, ch. 307, § 24, eff from and after passage (approved March 3, 1987).

Cross references—

Issuance of county bonds generally, see §§ 19-9-1 et seq.

Issuance of municipal bonds generally, see §§ 21-33-301 et seq.

Advertising sales of bonds generally, see § 31-19-25.

Additional powers conferred in connection with issuance of bonds, see §§ 37-59-25 and 31-21-5.

Issuance of bonds by municipalities and municipal separate school districts for establishment and maintenance of agricultural high schools, see § 37-27-63.

Issuance of bonds by counties for establishment and development of agricultural high schools, see § 37-27-65.

Issuance of bonds by municipalities and municipal separate school districts for establishment and maintenance of junior colleges, see § 37-29-265.

Issuance by state bond commission of state school bonds, see § 37-47-33.

Pledge of monies from Education Enhancement Fund to pay debt service on debt issued under this section, see § 37-61-33.

Research and Practice References—

64 Am Jur 2d, Public Securities and Obligations §§ 210, 211, 213, 214, 277.

79 CJS, Schools and School Districts § 360.

22 Am Jur Pl & Pr Forms (Rev), Schools, Forms 31 et seq. (taxation by school districts; fees and bonds).

JUDICIAL DECISIONS

1. In general
2.-5. [Reserved for future use.]
6. Under former law

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1. In general

A resolution of the school trustees requesting the board of supervisors to call an election for school bond issue which recites the necessary preliminary facts complied with the statute despite the objection that the order recited but did not adjudicate that the district is the legally existing district. Tedder v Board of Sup'rs (1952) 214 Miss 717, 59 So 2d 329.

On appeal to the circuit court from an order of the board of supervisors of Neshoba County directing issuance of bonds in the amount of $40,000 for the benefit of a high school, the circuit court had authority to hear and determine the matter only on the case as presented by the bill of exceptions as an appellate court, and hence the court was correct in refusing to permit the introduction of evidence on the hearing of the cause in the circuit court. East Neshoba Vocational High School Bonds v Board of Sup'rs (1952) 213 Miss 146, 56 So 2d 394.

2.-5. [Reserved for future use.]

6. Under former law

Under Code 1942, § 6370, gymnasium is school building and bonds may be issued for erection or repair of gymnasium, improvement of water system and repairing and improving school buildings. Re Savannah Special Consol. School Dist. (1950) 208 Miss 460, 44 So 2d 545.

Code 1942, §§ 4341, 4342, and 6370, dealing with the same subject-matter, must be interpreted to harmonize with each other, to stand with as full effect as possible consistently with related sections, and to fit into the dominant policy of entire legislation on subject. Ashcraft v Board of Sup'rs (1948) 204 Miss 65, 36 So 2d 820.

Code 1942, §§ 4342 and 6370 providing for the issuance of bonds for consolidated school districts are written into and become a part of Code 1942, § 4341, specifically providing for creation of specified area which shall be a unit for the issuance of school bonds and for application of all other provisions of law with reference to issuance and payment of school bonds to such specified areas. Ashcraft v Board of Sup'rs (1948) 204 Miss 65, 36 So 2d 820.

Issuance of school bonds to construct, erect and equip new school building, to move, relocate, make alterations and additions to existing principal's residence, and to move, relocate, make alterations to building used as school building is within authorized purposes under Code 1942, §§ 4341 and 6370. Ashcraft v Board of Sup'rs (1948) 204 Miss 65, 36 So 2d 820.

The purpose for the issuance of bonds under Code 1942, § 6370, must be free from ambiguity, and the proceeding for their issuance must clearly show such purposes upon their face, and show it with such certainty as will distinctly disclose that their issuance will be definitely within the statutory authority. Hisaw v Ellison Ridge Consol. School Dist. (1940) 189 Miss 664, 198 So 557.

The issuance of bonds in a proceeding on petition by a majority of electors of a consolidated school district was erroneous where the statement of purposes for the issuance of such bonds in the petition filed with the board of supervisors contained the abbreviation of et cetera, the inclusion of which made the petition broader than the statute, and prayed for things which the statute did not embrace. Hisaw v Ellison Ridge Consol. School Dist. (1940) 189 Miss 664, 198 So 557.

Code 1942, § 6370. Consolidated school law held not to discriminate between races, nor to deny equal protection of law nor take property without due process. Barrett v Cedar Hill Consol. School Dist. (1920) 123 Miss 370, 85 So 125.

CHAPTER 101

Institutions of Higher Learning; General Provision

SCHOLARSHIPS AND LOANS

SEC.
37-101-291. Program for paid educational leave for study of certain health care professions.

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§ 37-101-291. Program for paid educational leave for study of certain health care professions.

(1) In order to help alleviate the problem of the shortage of health care professionals at the state health institutions, there is hereby established a program of paid educational leave for the study of such health care professions as defined in Section 37-101-287 and licensed practical nursing by any employee who works at these state health institutions and who declares an intention to work in such respective health care occupation in the same state health institution in which they were working when they were granted educational leave, for a minimum period of time after graduation.

(2) The paid educational leave program shall be administered by the respective state health institutions.

(3)(a) Within the limits of the funds available to a state health institution for such purpose, the institution may grant paid educational leave to those applicants deemed qualified therefor, upon such terms and conditions as it may impose and as provided for in this section.

(b) In order to be eligible for paid educational leave, an applicant must:

(i) Be working at a state health institution at the time of application;

(ii) Attend any college or school approved and designated by the state health institution; and

(iii) Agree to work as a health care professional as defined in Section 37-101-285 or as a licensed practical nurse in the same state health institution for four (4) full years after graduation.

(c)(i) Before being granted paid educational leave, each applicant shall enter into a contract with the state health institution, which shall be deemed a contract with the State of Mississippi, agreeing to the terms and conditions upon which the paid educational leave shall be granted to him. The contract shall include such terms and provisions necessary to carry out the full purpose and intent of this section. The form of such contract shall be prepared and approved by the Attorney General of this state, and shall be signed by the executive director of the respective state health institution and the recipient. If the recipient is a minor, his minority disabilities shall be removed by a chancery court of competent jurisdiction before the contract is signed.

(ii) The state health institution shall have the authority to cancel any contract made between it and any recipient for paid educational leave upon such cause being deemed sufficient by the executive director of such institution.

(iii) The state health institution is vested with full and complete authority and power to sue in its own name any recipient for any balance due the state on any such uncompleted contract, which suit shall be filed and handled by the Attorney General of the state.

(4)(a) Any recipient who is granted paid educational leave by a state health institution shall be compensated by the institution during the time he or she is in school, at the rate of pay received by a nurse's aide employed at the respective state health institution. However, no recipient of full-time educational leave shall accrue personal or major medical leave while he or she is on paid educational leave. Recipients of paid educational leave shall be responsible for their individual costs of tuition and books.

(b) Paid educational leave shall be granted only upon the following conditions:

(i) The recipient shall fulfill his or her obligation under the contract with the State of Mississippi by working as a health care professional defined in Section 37-101-287 or as a licensed practical nurse in a state health institution; a recipient sponsored by a health institution under the supervision of the Mississippi Department of Mental Health may fulfill his or her obligation under the contract with the State of Mississippi at another health institution under the supervision of the Mississippi Department of Mental Health with prior written approval of the Director of the Department of Mental Health institution with which he or she originally contracted for educational leave. One-fourth (1/4) of the total compensation that the recipient was paid while on educational leave shall be considered as unconditionally earned for each year of service as such health care professional in his respective state health institution.

(ii) If the recipient does not work as a health care professional as defined in Section 37-101-285 or as a licensed practical nurse in his respective state health institution for four (4) full years after graduation, the recipient shall be liable for repayment on demand of the remaining portion of the compensation that he or she was paid while on paid educational leave which has not been unconditionally earned, with interest accruing at ten percent (10%) per annum from the recipient's date of graduation, or the date that the recipient last worked at that state health institution, whichever is the later date. In addition, there shall be included in any contract for paid educational leave a provision for liquidated damages equal to Two Thousand Dollars ($2,000.00) per year for each year remaining to be served under such contract.

(iii) If any recipient fails or withdraws from school at any time before completing his or her health care training, the recipient shall be liable for repayment on demand of the amount of the total compensation that he or she was paid while on paid educational leave, with interest accruing at ten percent (10%) per annum from the date the recipient failed or withdrew from school. However, if the recipient returns to work in the same position he or she held in the same state health institution prior to accepting educational leave, he or she shall not be liable for payment of any interest on the amount owed.

SOURCES: Laws, 1989, ch. 549, § 4; 1993, ch. 437, § 1; 1994, ch. 428, § 1, eff from and after July 1, 1994.

TITLE 39

LIBRARIES, ARTS, ARCHIVES AND HISTORY

Chapter 1. State Library
Chapter 3. Libraries and Library Commission
Chapter 5. Archives and History
Chapter 9. Trusts to Promote Arts and Sciences

CHAPTER 1

State Library

SEC.
39-1-1. State library; supervision.
39-1-35. Legislative reference bureau.

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§ 39-1-1. State library; supervision.

(1) There shall be a State Library which shall render law library services to the Supreme Court and other state courts, to state officials and to the general public.

(2) The State Library shall be under the supervision and control of the Mississippi Supreme Court and the court shall be empowered to promulgate policies and procedures necessary to the efficient operation of the Library.

SOURCES: Codes, 1942, § 9037; Laws, 1940, ch. 135; 1989, ch. 321, § 1, eff from and after July 1, 1989.

§ 39-1-35. Legislative reference bureau.

There is hereby created a legislative reference bureau, for the use of the members of the legislature, the governor, and the various departments, institutions and agencies of this state, as well as for a limited service for such citizens of this state as may desire to avail themselves of its reference facilities. The legislative reference bureau shall be under the joint jurisdiction of the house management committee and the senate contingent expense committee of the legislature.

The purpose of the said legislative reference bureau shall be:

(a) To assist the legislature of this state in the proper performance of its constitutional functions by providing its members with impartial and accurate information and reports concerning the legislative problems which come before them, and by providing digests showing the practices of other states and of foreign nations in dealing with similar problems;

(b) To secure information for the legislators of this state by cooperating with the legislative reference services in other states, and with the interstate reference bureau maintained by the American legislators' association and by the council of state governments;

(c) To furnish the members of the legislature of this state, copies of the legislation of other states, uniform laws, model bills, textbooks on the preparation of legislative measures, and such other information and material as may be of value to them in the preparation of bills for introduction into the legislature of this state.

The legislative reference bureau shall have a director, who shall be hired jointly by the house manage-

ment committee and the senate contingent expense committee, and the duties of the director shall be prescribed jointly by the house management committee and the senate contingent expense committee.

The legislative reference bureau shall be maintained out of the contingent funds of each house of the legislature, with an equal amount to be contributed by each house.

SOURCES: Codes, 1942, § 9054; Laws, 1938, ch. 163; 1970, ch. 475, § 1; 1980, ch. 452, eff from and after July 1, 1980.

CHAPTER 3

Libraries and Library Commission

ARTICLE 1

LIBRARIES

SEC.

39-3-1. Establishment of libraries by counties and municipalities.
39-3-3. Funds for establishment and operation.
39-3-5. County library tax; additional funds for support, upkeep and maintenance.
39-3-7. Municipal library tax; additional funds for support, upkeep and maintenance.
39-3-8. Joint city-county public library system.
39-3-9. Regional public library systems.
39-3-11. Participation in county library, county regional library system or city-county library system by existing libraries.
39-3-13. Contract service.
39-3-15. Board of trustees.
39-3-17. Board of trustees; organization, powers and duties.
39-3-19. Annual reports.
39-3-20. Sabbatical leave for professional library staff.
39-3-21. Free use of libraries.
39-3-23. Construction of article.

§ 39-3-1. Establishment of libraries by counties and municipalities.

It is hereby declared to be the policy of this state to allow and promote the establishment and development of free public library service throughout this state as a part of its provisions for public education. "Public library" shall mean a library which provides customary services, without charge, to all the residents of a county, city or region and is supported whole or in part by public funds. Reasonable reimbursements may be collected for special library services provided these are determined in advance and in writing by the administrative board of trustees.

The board of supervisors of any county in the State of Mississippi, or other governing bodies of the counties of this state, and municipalities and towns, through their governing bodies, may establish and maintain or aid in establishing and maintaining free public libraries for the use of the citizens of the respective counties, municipalities or towns, either separately or in connection with free public libraries already established therein. For said purpose said governing body may acquire the necessary real estate either by purchase, gift or donation and may erect the necessary buildings thereon.

SOURCES: Codes, 1942, § 6200; Laws, 1938, ch. 289; 1988, ch. 589, § 8, eff from and after July 1, 1988.

Cross references—

Power of municipalities to maintain public libraries, see § 21-37-19.

County aid for maintenance of public school libraries, see §§ 37-55-1 et seq.

§ 39-3-3. Funds for establishment and operation.

Where any public library or public library system is established under this article, either by the county board of supervisors or the governing body of a municipality, the cost of purchasing land, erecting buildings and equipping and maintaining such public library or public library system shall be paid for in whole out of the general funds of the county or municipality.

SOURCES: Codes, 1942, § 6201; Laws, 1938, ch. 289; 1958, ch. 479; 1986, ch. 400, § 21; 1988, ch. 589, § 9, eff from and after July 1, 1988.

Cross references—

Authorization of a county board of supervisors to appropriate funds towards support of public school libraries, see § 37-55-5.

Duties of Mississippi library commission, see § 39-3-107.
Creation of trusts for founding public institutions, see §§ 39-9-1 et seq.

§ 39-3-5. County library tax; additional funds for support, upkeep and maintenance.

(1) Any county which supports a public library or public library system may, by order of the board of supervisors of such county, in their discretion, levy a four (4) mill tax on all taxable property within the county to be used for the support, upkeep and maintenance of any public library or public library system located in said county.

(2) The taxes levied under this section shall be excluded from the revenue increase limitation imposed pursuant to Section 27-39-321.

(3) In addition to the levy herein authorized, the board of supervisors of any county may, in their discretion, make contributions from any available funds for the support, upkeep and maintenance of any public library or public library system located in such county.

SOURCES: Codes, 1942, § 6200-01; Laws, 1946, ch. 203; 1950, ch. 234, §§ 1, 2; 1952, ch. 206, §§ 1, 2; 1958, ch. 229, §§ 1, 2; 1962, ch. 258; 1968, ch. 383, § 1; 1986, ch. 400, § 22; 1988, ch. 589, § 10, eff from and after July 1, 1988.

Cross references—
Power of municipalities to maintain public libraries, see § 21-37-19.
County aid for maintenance of public school libraries, see §§ 37-55-1 et seq.

§ 39-3-7. Municipal library tax; additional funds for support, upkeep and maintenance.

(1) Any municipality which supports a public library or public library system may, by order of the governing authorities of such municipality, in their discretion, levy a three (3) mill tax on all taxable property within the municipality to be used for the support, upkeep and maintenance of any public library or public library system located in said municipality.

(2) The taxes levied under this section shall be excluded from the revenue increase limitation imposed pursuant to Section 27-39-321.

(3) In addition to the levy herein authorized, the governing authorities of any municipality may, in their discretion, make contributions from any available funds for the support, upkeep and maintenance of any public library or public library system located in such municipality.

SOURCES: Codes, 1942, § 6200-01; Laws, 1946, ch. 203; 1950, ch. 234, §§ 1, 2; 1952, ch. 206, §§ 1, 2; 1958, ch. 229, §§ 1, 2; 1962, ch. 258; 1968, ch. 383, § 1; 1984, ch. 334; 1988, ch. 589, § 11, eff from and after July 1, 1988.

Cross references—
Power of municipalities to maintain public libraries, see § 21-37-19.
County aid for maintenance of public school libraries, see §§ 37-55-1 et seq.

§ 39-3-8. Joint city-county public library system.

The board of trustees of any municipal public library, or any group of municipal public libraries, and the board of trustees of any county public library system, may, with the consent of the governing body of said municipality, or municipalities, and with the consent of the board of supervisors of said county, contract with each other or among themselves, to create, maintain and support a joint city-county public library system. Such a contract shall contain such terms, agreements and conditions as may be agreed upon by the board of trustees of the municipal public library, or the public library boards of trustees of the several municipalities, and by the board of trustees of the county public library.

SOURCES: Laws, 1988, ch. 589, § 12, eff from and after July 1, 1988.

Cross references—
Application of this section to the definition of "public library system" for purposes of the statewide library development system, see § 39-3-353.

§ 39-3-9. Regional public library systems.

Two (2) or more counties by action of their boards of supervisors may join in establishing and maintaining a regional public library system under the terms of a contract to which all of the participating counties agree. The expenses of the regional public library systems shall be apportioned between or among the coun-

ties concerned on such basis as shall be agreed upon in the contract. The public library system headquarters building shall be located at a place in one of the counties to be agreed upon by the boards of supervisors of the various counties in the regional public library system.

SOURCES: Codes, 1942, § 6202; Laws, 1938, ch. 289; 1988, ch. 589, § 13, eff from and after July 1, 1988.

Cross references—
Application of this section to the definition of "public library system" for purposes of the statewide library development system, see § 39-3-353.

§ 39-3-11. Participation in county library, county regional library system or city-county library system by existing libraries.

When a county public library, city-county public library system or regional public library system shall have been established under this article, any municipality which is aiding in maintaining or supporting a public library, or which desires to aid in providing public library service for that portion of the county's residents which reside within the municipality, may participate in said county public library, city-county public library system or regional public library system. This participation shall be on such terms as may be agreed upon among the governing body of the municipality, the board of trustees of the existing municipal public library and the board of trustees of the county public library, city-county public library system or regional public library system.

SOURCES: Codes, 1942, § 6203; Laws, 1938, ch. 289; 1962, ch. 335, § 1; 1988, ch. 589, § 14, eff from and after July 1, 1988.

Cross references—
Application of this section to the definition of "public library system" for purposes of the statewide library development system, see § 39-3-353.

§ 39-3-13. Contract service.

(1) The governing body of any municipality may contract with the board of trustees of any established public library or public library system to receive the services of that established public library or public library system.

(2) The board of supervisors of any county in the state may, with the consent of the board of trustees of an established public library system, contract for library service from any established public library system.

(3) The board of trustees of any regional public library system may contract for such region to receive library service from any established public library system.

(4) There shall be one (1) board of trustees in each public library system with the administrative powers and responsibilities prescribed in Section 39-3-17, Mississippi Code of 1972. Any other board of trustees within such library system shall serve in a purely advisory capacity to said administrative board. The administrative board shall be designated by contract among all such boards of trustees within the system. Advisory boards may contract with administrative boards to provide local services and policies as may be mutually agreed on. In the event an agreement cannot be reached among all such boards of trustees, the matter shall be submitted to a negotiating committee comprised of the following: two (2) persons selected by each of the boards of trustees involved in the matter plus two (2) persons selected by the Mississippi Library Commission.

(5) Contracts for library services shall include, but not limited to: (a) name of library system; (b) definition of library service area; (c) name of all parties and responsibilities regarding participation in the library system, including but not limited to funding of the library system and maintenance of facilities; (d) appointment of board of trustees with the naming of the administrative board and the stated responsibilities of said boards; (e) eligibility and criteria for participation of new libraries in the library system; and (f) a stated contract review and renewal process. The contract shall provide for the dissolution of such library system including, but not limited to, the definition of assets and the procedure for the distribution of such assets.

SOURCES: Codes, 1942, § 6204; Laws, 1938, ch. 289; 1944, ch. 200, § 1; 1962, ch. 335, § 2; 1988, ch. 589, § 15, eff from and after July 1, 1988.

Cross references—
Power of municipalities to maintain public libraries, see § 21-37-19.

Direction that the trustees of the administrative board designated pursuant to this section meet and organize their public library system, see § 39-3-17.

Application of this section to the definition of "administrative board" and "public library system" for purposes of the statewide library development system, see § 39-3-353.

§ 39-3-15. Board of trustees.

(1)(a) The management and control of a county or municipal public library shall be vested in a board of five (5) trustees, who shall be appointed by the governing authorities of the county or municipality. The first appointments shall be for the terms of one (1), two (2), three (3), four (4) and five (5) years respectively, and thereafter, a trustee shall be appointed to serve five (5) years.

(b) Notwithstanding the provisions of paragraph (1)(a) of this section, the board of supervisors of any county that borders on the Gulf of Mexico, in which Interstate 10 intersects U.S. Highway 49 and that operates a county library system may appoint, in its discretion, six (6) trustees to the county public library board. If the board of supervisors of any such county elects to appoint six (6) members to the board of trustees, the first appointments shall be for the terms of one (1), two (2), three (3), four (4), five (5) and six (6) years respectively, and thereafter a trustee shall be appointed to serve six (6) years.

(2) When five (5) counties support a regional public library system, the management and control of the regional public library system shall be vested in a board of five (5) trustees. The trustees shall be appointed by the governing authorities of the counties that support the regional public library system.

(3) In a regional public library system supported by less than five (5) counties, the distribution of the membership on the board of trustees shall be determined by agreement among the counties that support the regional public library system.

(4) In a regional public library system of more than five (5) counties, one (1) member of the board of trustees shall be appointed by the governing authority of each county supporting the regional public library system. In the first appointments to the regional public library system board of trustees, five (5) members shall be appointed for terms of one (1), two (2), three (3), four (4) and five (5) years respectively, and any number of trustees above five (5) shall be appointed for terms of one (1) year. Thereafter, all trustees shall be appointed annually to serve five (5) years.

(5) The management and control of a city-county public library system shall be vested in a board of trustees, the number of which shall be agreed upon by the board of trustees of the governing body of municipality, or municipalities, and with the consent of the board of supervisors which have contracted with each other or among themselves, to create, maintain and support a joint city-county library system. The term of each trustee shall be for a period of five (5) years. Initial appointments to the city-county board shall be made in a manner determined by the counties and municipalities involved so that terms expire on a staggered basis.

(6) Each trustee shall be a resident and qualified elector of the municipality, county or region represented by said trustee. Trustees shall be limited to two (2) consecutive terms of office in counties of over twenty thousand (20,000) population; however, there shall be no limit on the number of terms served by a trustee. In counties of less than twenty thousand (20,000) population, there shall be no limit on the number of terms served by any trustee holding office on July 1, 1988; provided, that said limitation shall be applicable to new trustees appointed subsequent to July 1, 1988. Vacancies on the board of trustees of a county public library, municipal public library, regional public library system or city-county public library system shall be filled for unexpired terms in the same manner in which members of the board were first appointed. Any trustee who shall not attend four (4) consecutive meetings of the board shall be subject to removal by the governing authority. No trustee shall receive a salary or other compensation for his service; provided, however, that all trustees shall be reimbursed for their necessary traveling expenses and mileage incident to their attendance upon the business of the board, as provided in Section 25-3-41, Mississippi Code of 1972.

SOURCES: Codes, 1942, § 6205; Laws, 1938, ch. 289; 1952, ch. 207; 1977, ch. 312; 1986, ch. 514; 1988, ch. 589, § 16; 1994, ch. 364, § 1, eff from and after July 1, 1994.

§ 39-3-17. Board of trustees; organization, powers and duties.

(1) The trustees of the administrative board designated pursuant to Section 39-3-13(4), immediately after

their appointment or election, shall meet and organize by the election of such officers as they deem necessary. They shall (a) adopt such bylaws, rules and regulations for their own guidance and for the government of the library as they deem expedient; (b) meet at least once in each quarter; (c) have the supervision, care and custody of all property of the library, including the rooms or buildings constructed, leased or set apart therefor; (d) employ a library system director, prescribe his/her duties, fix his/her compensation, and remove him/her for cause; (e) employ, upon the recommendation of the library system director, such other staff as may be necessary and fix their compensation; (f) submit annually to the governing body a budget containing estimates for the ensuing year; (g) have exclusive control of the finances of the library system; (h) accept such gifts of money or property for library purposes as they deem expedient; (i) on recommendation of library system director purchase books, periodicals, maps, equipment, insurance and supplies for the library system; (j) dispose of equipment and discarded library materials as provided in Section 19-7-5, Mississippi Code of 1972; and (k) do all other acts necessary for the orderly and efficient management and control of the library system. But no expenditure made or contracted by the trustees shall be binding on any county or municipality so as to require any payment in excess of funds made available for library purposes under this article.

(2) There shall be one (1) library director for each library system. Said library system director shall have such educational qualifications as are prescribed by the Mississippi Library Commission. The library system director shall administer and establish procedures according to policies established by the administrative board of trustees. His or her duties shall include: (a) employment of staff with the approval of the board of trustees; (b) prescription of staff duties; (c) removal of staff for cause; (d) preparation of the budget; (e) financial and statistical management; (f) reporting to board of trustees; and (g) other acts necessary for the orderly and efficient administration of the library system.

(3) In the event that a determination is made by the library system director to remove a staff member for cause, written notice of such decision shall be given to such staff member. A staff member who has received such notice shall be entitled to:

(a) Written notice of the reasons for such action, together with a summary of the factual basis therefor, which notice shall be given at least five (5) days prior to any hearing;

(b) An opportunity for a hearing before the board of trustees at which to present matters relevant to the reasons given for the decision, including any reasons alleged by the employee to be the reason for such action;

(c) Receive a fair and impartial hearing before the board;

(d) Be represented by legal counsel, at his own expense.

If the staff member does not request a hearing, the decision of the director shall be final.

(4) On at least a bi-monthly basis, the board of supervisors of each county and the governing authority of each municipality supporting a public library system shall transmit its warrant or warrants constituting one-sixth (1/6) of the annual appropriation for the support and maintenance thereof to the library director of such system. All such warrants shall be deposited in one or more public depositories previously selected by the board of trustees of the library system. The said board of trustees shall, by appropriate order spread upon its minutes, authorize the library director to expend such funds for lawful purposes only and in accordance with its annual budget previously adopted. All such funds shall be placed in the depository or depositories selected by the administrative library board of trustees in the same manner as provided in Section 27-105-305 for the selection of county depositories, provided that the selection shall be effective on July 1 of each year. Such depository shall place on deposit with the library director the same securities as required in Section 27-105-315.

SOURCES: Codes, 1942, § 6206; Laws, 1938, ch. 289; 1988, ch. 589, § 17, eff from and after July 1, 1988.

Cross references—

Single board of trustees in each public library system having the administrative powers and responsibilities prescribed in this section, see § 39-3-13.

Duties of Mississippi library commission, see § 39-3-107.

Definitions relating to Libraries and Library Commissions, see § 39-3-353.

§ 39-3-19. Annual reports.

At the close of each year the administrative board of trustees of every public library system shall make a

report to the governing body in the county or counties or municipality or municipalities wherein the board serves, showing the condition of the trust during the year, the sums of money received for the library fund from taxes and other sources, the sums of money expended and the purposes of the expenditures, the number of books and periodicals on hand, the number added during the year, the number withdrawn, the number loaned out, and such other statistics and information and such suggestions as the administrative board of trustees deems of public interest. A copy of this report shall be filed in the State Library Commission.

SOURCES: Codes, 1942, § 6207; Laws, 1938, ch. 289; 1988, ch. 589, § 18, eff from and after July 1, 1988.

§ 39-3-20. Sabbatical leave for professional library staff.

(1) Professional library staff members of a public library shall be eligible for sabbatical leave for the purpose of professional improvement, for not more than one (1) year immediately following any six (6) or more consecutive years of active service in the libraries of this state. Absence on sick leave shall not be deemed to interrupt the active service herein provided for. Sabbatical leave for professional library staff members shall only be granted with the approval of the administrative board of trustees.

(2) Applications for sabbatical leave may be made to the administrative board of trustees of such library system, with the approval of the library director of such system. Any person who is granted a sabbatical leave and who fails to comply with the provisions of such leave may have his/her leave terminated by the administrative board of trustees. No person on sabbatical leave can be denied any regular increment of increase in salary because of absence on sabbatical leave. Service on sabbatical leave shall count as active service for the purpose of retirement and contributions to the retirement fund shall be continued.

(3) In no instance shall leave be granted unless there is a contract providing for continued service, after expiration of the leave, in the library system where the person is employed.

(4) Each person granted sabbatical leave may receive and be paid compensation up to the rate of fifty percent (50%) of such person's annual salary. Compensation payable to persons on sabbatical leave shall be paid at the same time and in the same manner salaries of the other members of the library system are paid.

SOURCES: Laws, 1988, ch. 389, § 19, eff from and after July 1, 1988.

§ 39-3-21. Free use of libraries.

Every public library or public library system established or maintained under this article shall be free for the use of the residents of the territory included within the library service area, subject to such reasonable rules and regulations as the administrative board of trustees finds necessary. Reasonable reimbursements may be collected for special library services, provided these are determined in advance and in writing by the administrative board of trustees.

SOURCES: Codes, 1942, § 6208; Laws, 1938, ch. 289; 1988, ch. 589, § 20, eff from and after July 1, 1988.

§ 39-3-23. Construction of article.

This article shall not be construed to abrogate the force of charter provisions or any local act governing existing public libraries. This chapter shall be construed as additional and supplemental to subsection (j) of section 19-5-93, Mississippi Code of 1972.

SOURCES: Codes, 1942, § 6209; Laws, 1938, ch. 289.

ARTICLE 3

MISSISSIPPI LIBRARY COMMISSION

SEC.

39-3-101. Mississippi Library Commission created; term of office.
39-3-103. First meeting.
39-3-105. Director to be elected; qualifications.
39-3-107. Duties of commission.
39-3-109. How funds drawn.
39-3-111. Gifts, acceptance of.

§ 39-3-101. Mississippi Library Commission created; term of office.

There is hereby created a board of commissioners of the Mississippi Library Commission to be composed of five members appointed by the governor with overlapping terms, the members of the first board to be appointed one for one year, one for two years, one for three years, one for four years, one for five years, and their successors each to be appointed for five year terms, each member to serve until his successor is appointed. Two members shall be appointed by the governor from the state at large. Two members shall be appointed by the governor from a list of not less than six names submitted by the Mississippi library association, one of whom shall be a librarian who is a graduate of a library school accredited by the American Library Association and actively engaged in full time library work at the time of the appointment and one of whom shall be, at time of the appointment, a member of a legally organized board of trustees of a Mississippi free public library; and one member shall be the president of the Mississippi Federation of Women's Clubs, or a member of said federation recommended by her; and which federation member shall, when appointed, serve a full term as herein provided for members to serve under a staggered term basis, and the successor to the federation member shall be the president of the federation then serving, or a member of the federation recommended by her, when the term of the federation member shall expire; and after the appointment of a federation member to the board, and when her term as a member thereof shall expire, each succeeding member of the federation who becomes a member of the board shall serve a full term under the provisions of this article. Vacancies created by resignation shall be filled by appointment for the unexpired term.

SOURCES: Codes, 1942, § 6210-01; Laws, 1950, ch. 363, §§ 1, 2, eff from and after June 30, 1950.

Cross references—

Application of this section to the definition of "commission" for purposes of the statewide library development system, see § 39-3-353.

§ 39-3-103. First meeting.

Within thirty days after the selection and appointment of the first board of commissioners the members shall meet at the headquarters of the Mississippi Library Commission in Jackson, Mississippi, and organize, setting up such policies as are deemed necessary and not inconsistent with this article. They shall elect annually from their membership a chairman and a secretary.

SOURCES: Codes, 1942, § 6210-02; Laws, 1950, ch. 363, § 3, eff from and after June 30, 1950.

§ 39-3-105. Director to be elected; qualifications.

(1) The board of library commissioners shall elect a director whose term of office shall be for a period of four years, unless, for good cause shown, the board of library commissioners removes said director.

(2) The director shall be chosen outside the membership of the board of library commissioners, and shall be a trained, experienced librarian holding a degree from a college or university of recognized standing. The director shall have completed the required course covered in a school of library service accredited by the American Library Association and shall have had at least two years' experience as an administrative librarian or director of a state or public library. The director shall keep an accurate record of all accounts and financial transactions of the board, shall have charge of organizing new libraries and directing library development in the state, so as to give and furnish every citizen and resident of the state free library service of the highest quality consistent with modern methods and as may be justified by financial and economic conditions, and shall have all general administrative duties incident to carrying on the work of the Mississippi Library Commission. All necessary and actual traveling expense incurred by the members of the Mississippi Library Commission, and by the director or any member of the staff, acting under the authority and direction of the board of commissioners, while on business for the Mississippi Library Commission, shall be paid from the funds appropriated and made available for use, maintenance and operation of the Mississippi Library Commission. In addition to the director, the board of library commissioners may employ, upon recommendations of the director, such other persons as may be deemed necessary to carry out the purposes of this article.

SOURCES: Codes, 1942, § 6210-03; Laws, 1950, ch. 363, §§ 4, 5, eff from and after June 30, 1950.

§ 39-3-107. Duties of commission.

The Mississippi Library Commission, upon request, shall give advice to all schools, public and other librar-

ies, and to all communities which may propose to establish them, as to the best means of establishing and maintaining such libraries, the selection of books, cataloging and other details of library management. It may also purchase and operate traveling libraries, and circulate such traveling libraries within the state among communities, libraries, schools, colleges, universities, library associations, study clubs, charitable and penal institutions free of cost, except for transportation, and establish county and regional libraries and use any funds, separate and apart from the general library commission funds, which might come into its custody from any source, for such purpose, and for the purpose of establishing, stimulating, increasing, improving and equalizing library service in the various counties within the state, under such rules for safekeeping, preservation, care, handling of the books and allocation of the funds as may be fixed by the commission. It may publish such lists and circulars of information as it shall deem necessary, and it may also conduct a summer school of library instruction and a clearinghouse for periodicals for free gifts to local libraries. The commission shall each year obtain from all libraries in the state reports showing the condition, growth, development and manner of conducting such libraries, together with such other facts and statistics regarding the same as may be deemed of public interest by the commission, and it shall be the duty of the board of the Mississippi Library Commission to make an annual report to the Legislature of the facts of public interest and value in relation to the work of the commission. The Mississippi Library Commission shall adopt rules and regulations relative to the allocation of state aid funds to public library systems.

SOURCES: Codes, 1930, § 5391; 1942, §§ 6210-04, 6213; Laws, 1926, ch. 180; 1940, ch. 143; 1950, ch. 363, § 6; 1970, ch. 358, § 1, ch. 359, § 1; 1988, ch. 589, § 21, eff from and after July 1, 1988.

Cross references—

County library commission, see § 37-55-1.

Organization, powers, and duties of board of trustees of a county or municipal library, see § 39-3-17.

Duties of the Library Commission with respect to the statewide library development system, see §§ 39-3-351 et seq.

§ 39-3-109. How funds drawn.

The board of commissioners of the Mississippi Library Commission may from time to time as needed draw an order signed by the director and the chairman in favor of any party to whom money is due stating in such order what the money is to be used for, and, upon presentation of such order, the state auditor shall draw his warrant upon the state treasurer for the amount therefor not to exceed the amount of the appropriation for the purposes of the Mississippi Library Commission.

SOURCES: Codes, 1942, § 6210-05; Laws, 1950, ch. 363, § 7, eff from and after June 30, 1950.

Editor's Note—

Section 7-7-2, as added by Laws, 1984, chapter 488, § 90, and amended by Laws, 1985, chapter 455, § 14, Laws 1986, chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws, 1989, chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws, 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

§ 39-3-111. Gifts, acceptance of.

The board of commissioners of the Mississippi Library Commission may accept in the name of the state gifts of money, real estate, books, periodicals, or other property for the purpose of promoting the work of the Mississippi Library Commission, and may accept and administer any funds which might be provided by the federal government for library purposes.

SOURCES: Codes, 1942, § 6210-06; Laws, 1950, ch. 363, § 8, eff from and after June 30, 1950.

ARTICLE 5

INTERSTATE LIBRARY COMPACT

SEC.

39-3-201. Entry into and contents of compact.
39-3-203. Agreements for construction or maintenance of interstate libraries; compliance with other governing laws.

39-3-205. State library agency defined.
39-3-207. District partly within state; eligibility for state and federal aid.
39-3-209. Compact administrator and deputy administrators.
39-3-211. Notices in event of withdrawal from compact.

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§ 39-3-201. Entry into and contents of compact.

The Interstate Library Compact is hereby enacted into law and entered into by this state with all states legally joining therein in the form substantially as follows:

INTERSTATE LIBRARY COMPACT

Article I. Policy and Purpose

Because the desire for the services provided by libraries transcends governmental boundaries and can most effectively be satisfied by giving such services to communities and people regardless of jurisdictional lines, it is the policy of the states party to this compact to cooperate and share their responsibilities; to authorize cooperation and sharing with respect to those types of library facilities and services which can be more economically or efficiently developed and maintained on a cooperative basis, and to authorize cooperation and sharing among localities, states and others in providing joint or cooperative library services in areas where the distribution of population or of existing and potential library resources make the provision of library service on an interstate basis the most effective way of providing adequate and efficient service.

Article II. Definitions

As used in this compact:

(a) "Public library agency" means any unit or agency of local or state government operating or having power to operate a library.

(b) "Private library agency" means any nongovernmental entity which operates or assumes a legal obligation to operate a library.

(c) "Library agreement" means a contract establishing an interstate library district pursuant to this compact or providing for the joint or cooperative furnishing of library services.

Article III. Interstate Library Districts

(a) Any one or more public library agencies in a party state in cooperation with any public library agency or agencies in one or more other party states may establish and maintain an interstate library district. Subject to the provisions of this compact and any other laws of the party states which pursuant hereto remain applicable, such district may establish, maintain and operate some or all of the library facilities and services for the area concerned in accordance with the terms of a library agreement therefor. Any private library agency or agencies within an interstate library district may cooperate therewith, assume duties, responsibilities and obligations thereto, and receive benefits therefrom as provided in any library agreement to which such agency or agencies become party.

(b) Within an interstate library district, and as provided by a library agreement, the performance of library functions may be undertaken on a joint or cooperative basis or may be undertaken by means of one or more arrangements between or among public or private library agencies for the extension of library privileges to the use of facilities or services operated or rendered by one or more of the individual library agencies.

(c) If a library agreement provides for joint establishment, maintenance or operation of library facilities or services by an interstate library district, such district shall have power to do any one or more of the following in accordance with such library agreement:

1. Undertake, administer and participate in programs or arrangements for securing, lending or servicing of books and other publications, any other materials suitable to be kept or made available by librar-

ies, library equipment or for the dissemination of information about libraries, the value and significance of particular items therein, and the use thereof.

2. Accept for any of its purposes under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, (conditional or otherwise) from any state or the United States or any subdivision or agency thereof, or interstate agency, or from any institution, person, firm or corporation, and receive, utilize and dispose of the same.

3. Operate mobile library units or equipment for the purpose of rendering bookmobile service within the district.

4. Employ professional, technical, clerical, and other personnel, and fix terms of employment, compensation and other appropriate benefits; and where desirable, provide for the inservice training of such personnel.

5. Acquire, hold, and dispose of any real or personal property or any interest or interests therein as may be appropriate to the rendering of library service.

6. Construct, maintain and operate a library, including any appropriate branches thereof.

7. Do such other things as may be incidental to or appropriate for the carrying out of any of the foregoing powers.

Article IV. Interstate Library Districts, Governing Board

(a) An interstate library district which establishes, maintains or operates any facilities or services in its own right shall have a governing board which shall direct the affairs of the district and act for it in all matters relating to its business. Each participating public library agency in the district shall be represented on the governing board which shall be organized and conduct its business in accordance with provision therefor in the library agreement. But in no event shall a governing board meet less often than twice a year.

(b) Any private library agency or agencies party to a library agreement establishing an interstate library district may be represented on or advise with the governing board of the district in such manner as the library agreement may provide.

Article V. State Library Agency Cooperation

Any two or more state library agencies of two or more of the party states may undertake and conduct joint or cooperative library programs, render joint or cooperative library services, and enter into and perform arrangements for the cooperative or joint acquisition, use, housing and disposition of items or collections of materials which, by reason of expense, rarity, specialized nature, or infrequency of demand therefor would be appropriate for central collection and shared use. Any such programs, services or arrangements may include provision for the exercise on a cooperative or joint basis of any power exercisable by an interstate library district and an agreement embodying any such program, service or arrangement shall contain provisions covering the subjects detailed in Article VI of this compact for interstate library agreements.

Article VI. Library Agreement

(a) In order to provide for any joint or cooperative undertaking pursuant to this compact, public and private library agencies may enter into library agreements. Any agreement executed pursuant to the provisions of this compact shall, as among the parties to the agreement:

1. Detail the specific nature of the services, programs, facilities, arrangements or properties to which it is applicable.

2. Provide for the allocation of costs and other financial responsibilities.

3. Specify the respective rights, duties, obligations and liabilities of the parties.

4. Set forth the terms and conditions for duration, renewal, termination, abrogation, disposal of joint or common property, if any, and all other matters which may be appropriate to the proper effectuation and performance of the agreement.

(b) No public or private library agency shall undertake to exercise itself, or jointly with any other library agency, by means of a library agreement any power prohibited to such agency by the constitution or statutes of its state.

(c) No library agreement shall become effective until filed with the compact administrator of each state involved, and approved in accordance with Article VII of this compact.

Article VII. Approval of Library Agreements

(a) Every library agreement made pursuant to this compact shall, prior to and as a condition precedent to its entry into force, be submitted to the attorney general of each state in which a public library agency party thereto is situated, who shall determine whether the agreement is in proper form and compatible with the laws of his state. The attorneys general shall approve any agreement submitted to them unless they shall find that it does not meet the conditions set forth herein and shall detail in writing addressed to the governing bodies of the public library agencies concerned the specific respects in which the proposed agreement fails to meet the requirements of law. Failure to disapprove an agreement submitted hereunder within ninety days of its submission shall constitute approval thereof.

(b) In the event that a library agreement made pursuant to this compact shall deal in whole or in part with the provision of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its entry into force, be submitted to the state officer or agency having such power of control and shall be approved or disapproved by him or it as to all matters within his or its jurisdiction in the same manner and subject to the same requirements governing the action of the attorneys general pursuant to paragraph (a) of this article. This requirement of submission and approval shall be in addition to and not in substitution for the requirement of submission to and approval by the attorneys general.

Article VIII. Other Laws Applicable

Nothing in this compact or in any library agreement shall be construed to supersede, alter or otherwise impair any obligation imposed on any library by otherwise applicable law, nor to authorize the transfer or disposition of any property held in trust by a library agency in a manner contrary to the terms of such trust.

Article IX. Appropriations and Aid

(a) Any public library agency party to a library agreement may appropriate funds to the interstate library district established thereby in the same manner and to the same extent as to a library wholly maintained by it and, subject to the laws of the state in which such public library agency is situated, may pledge its credit in support of an interstate library district established by the agreement.

(b) Subject to the provisions of the library agreement pursuant to which it functions and the laws of the states in which such district is situated, an interstate library district may claim and receive any state and federal aid which may be available to library agencies.

Article X. Compact Administrator

Each state shall designate a compact administrator with whom copies of all library agreements to which his state or any public library agency thereof is party shall be filed. The administrator shall have such other powers as may be conferred upon him by the laws of his state and may consult and cooperate with the compact administrators of other party states and take such steps as may effectuate the purposes of this compact. If the laws of a party state so provide, such state may designate one or more deputy compact administrators in addition to its compact administrator.

Article XI. Entry Into Force and Withdrawal

(a) This compact shall enter into force and effect immediately upon its enactment into law by any two states. Thereafter, it shall enter into force and effect as to any other state upon the enactment thereof by such state.

(b) This compact shall continue in force with respect to a party state and remain binding upon such state until six months after such state has given notice to each other party state of the repeal thereof. Such withdrawal shall not be construed to relieve any party to a library agreement entered into pursuant to this compact from any obligation of that agreement prior to the end of its duration as provided therein.

Article XII. Construction and Severability

This compact shall be liberally construed so as effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

SOURCES: Codes, 1942, § 6209-21; Laws, 1970, ch. 459, § 1, eff from and after passage (approved April 6, 1970).

Cross references—
Agreements for construction or maintenance of interstate libraries, see § 39-3-203.

§ 39-3-203. Agreements for construction or maintenance of interstate libraries; compliance with other governing laws.

No county, municipality, or other political subdivision of this state shall be party to a library agreement which provides for the construction or maintenance of a library pursuant to Article III, subdivision (c) 7 of the compact, nor pledge its credit in support of such a library, or contribute to the capital financing thereof, except after compliance with any laws applicable to such counties, municipalities, or other political subdivisions relating to or governing capital outlaws and the pledging of credit.

SOURCES: Codes, 1942, § 6209-22; Laws, 1970, ch. 459, § 2, eff from and after passage (approved April 6, 1970).

§ 39-3-205. State library agency defined.

As used in the compact, "state library agency" with reference to this state, means the Mississippi Library Commission.

SOURCES: Codes, 1942, § 6209-23; Laws, 1970, ch. 459, § 3, eff from and after passage (approved April 6, 1970).

§ 39-3-207. District partly within state; eligibility for state and federal aid.

An interstate library district lying partly within this state may claim and be entitled to receive state aid in support of any of its functions to the same extent and in the same manner as such functions are eligible for support when carried on by entities wholly within this state. For the purposes of computing and apportioning state aid to an interstate library district, this state will consider that portion of the area which lies within this state as an independent entity for the performance of the aided function or functions and compute and apportion the aid accordingly. Subject to any applicable laws of this state, such a district also may apply for and be entitled to receive any federal aid for which it may be eligible.

SOURCES: Codes, 1942, § 6209-24; Laws, 1970, ch. 459, § 4, eff from and after passage (approved April 6, 1970).

§ 39-3-209. Compact administrator and deputy administrators.

The director of the Mississippi Library Commission shall be the compact administrator pursuant to Article

X of the compact. The director of the Mississippi Library Commission may appoint one or more deputy compact administrators pursuant to said article.

SOURCES: Codes, 1942, § 6209-25; Laws, 1970, ch. 459, § 5, eff from and after passage (approved April 6, 1970).

§ 39-3-211. Notices in event of withdrawal from compact.

In the event of withdrawal from the compact the governor shall send and receive any notices required by Article XI(b) of the compact.

SOURCES: Codes, 1942, § 6209-26; Laws, 1970, ch. 459, § 6, eff from and after passage (approved April 6, 1970).

ARTICLE 7

LIBRARY MATERIALS SECURITY

SEC.
39-3-301. Short title.
39-3-303. Unauthorized removal or wilful mutilation of library materials.
39-3-305. Definitions.
39-3-307. Applicability.
39-3-309. Penalty.
39-3-311. Relation with other criminal or civil proceedings.
39-3-313. Reasonable detention and questioning to determine whether offense was committed.

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§ 39-3-301. Short title.

This article shall be known and may be cited as the "Mississippi Library Materials Security Law."

SOURCES: Laws, 1978, ch. 418, § 1, eff from and after July 1, 1978.

§ 39-3-303. Unauthorized removal or wilful mutilation of library materials.

(1) It shall be unlawful for any person to remove library materials, without authorization, from the premises wherein such materials are maintained or to retain possession of library materials without authorization.

(2) It shall be unlawful for any person to wilfully mutilate library materials.

SOURCES: Laws, 1978, ch. 418, § 2, eff from and after July 1, 1978.

§ 39-3-305. Definitions.

As used in this article the term:

(a) "Without authorization" means contrary to rules which set forth policies governing access to library materials and include eligibility for library patronage and lending procedures.

(b) "Library materials" means books, manuscripts, letters, newspapers, court records, films, microfilms, tape recordings, phonograph records, lithographs, prints, photographs or any other written or printed document, graphic material of any nature and other personal property which is the property or in the custody of or entrusted to a public or private library, museum, archives or other depository.

(c) "Mutilate" means, in addition to its commonly accepted definition, the wilfull removal or separation of constituent parts of an item of library materials causing library materials to be exposed to damage; or duplication without authorization.

SOURCES: Laws, 1978, ch. 418, § 3, eff from and after July 1, 1978.

§ 39-3-307. Applicability.

The provisions of this article shall apply to all libraries, museums, archives and other depositories operated by an agency, board, commission, department or officer of the State of Mississippi, by private persons, societies or organizations, or by agencies or officers of municipalities, counties, school and junior college districts or of any other political subdivisions of the State of Mississippi.

SOURCES: Laws, 1978, ch. 418, § 4, eff from and after July 1, 1978.

§ 39-3-309. Penalty.

Any person who violates the provisions of section 39-3-303 is guilty of a misdemeanor and shall be punished by a fine not to exceed five hundred dollars ($500.00) or by imprisonment in the county jail not to exceed six (6) months, or by both such fine and imprisonment.

SOURCES: Laws, 1978, ch. 418, § 5, eff from and after July 1, 1978.

Cross references—
Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 39-3-311. Relation with other criminal or civil proceedings.

The provisions of this article are supplemental to other criminal statutes. An acquittal or conviction obtained under this article shall not be a bar to civil proceedings or actions arising from the same incident.

SOURCES: Laws, 1978, ch. 418, § 6, eff from and after July 1, 1978.

§ 39-3-313. Reasonable detention and questioning to determine whether offense was committed.

Any person employed by a library or any person charged with the supervision thereof with reason to believe that any person has committed or has attempted to commit any offense defined in section 39-3-303 of this article or if any person is believed to have concealed upon his person or within his belongings any library material, such person may be detained and questioned in a reasonable manner for the purpose of ascertaining whether or not such offense has been committed. Such detention and questioning shall not render such employee civilly liable for slander, false arrest, false imprisonment, malicious prosecution, unlawful detention or otherwise in any case where such library employee acts in good faith and in a reasonable manner.

SOURCES: Laws, 1978, ch. 418, § 7, eff from and after July 1, 1978.

ARTICLE 9

MISSISSIPPI STATEWIDE LIBRARY DEVELOPMENT SYSTEM ACT OF 1988

SEC.
39-3-351. Short title.
39-3-353. Definitions.
39-3-355. Committee to develop system of public service incentives within public library accreditation program.
39-3-357. State aid to accredited public library systems.
39-3-359. Library commission as primary resource library; commission to provide services to libraries.
39-3-361. Authorization to employ consultants and other staff.
39-3-363. Development of statewide master plan for public libraries.
39-3-365. Confidentiality of library user records.

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§ 39-3-351. Short title.

This article shall be known and may be cited as the "Mississippi Statewide Library Development System Act of 1988."

SOURCES: Laws, 1988, ch. 589, § 1, eff from and after July 1, 1988.

§ 39-3-353. Definitions.

For purposes of this article:

(a) "Administrative board" shall mean that board of trustees within a public library system designated pursuant to Section 39-3-13(4), Mississippi Code of 1972, with the administrative responsibilities prescribed under Section 39-3-17, Mississippi Code of 1972.

(b) "Commission" means the Mississippi Library Commission established under Section 39-3-101, Mississippi Code of 1972.

(c) "Cooperative" means any joint effort by two (2) or more library systems to improve library service.

(d) "Development system" means the statewide library development system, a network of public and nonpublic libraries cooperating in communities, districts and statewide to provide better library service.

(e) "Public library" means a library which provides customary services, without charge, to all the residents of a county, city or region and is supported whole or in part by public funds.

(f) "Public library system" means an affiliation of one or more public libraries that (i) is a minimum of one (1) county unit; (ii) has one (1) library administrative board of trustees; (iii) has one (1) library system director; (iv) is established according to Section 39-3-8, 39-3-9, 39-3-11 or 39-3-13, Mississippi Code of 1972; and (v) is supported whole or in part by public funds.

(g) "Nonpublic library" means a school, college or university, medical, business, law or other special library.

SOURCES: Laws, 1988, ch. 589, § 2, eff from and after July 1, 1988.

§ 39-3-355. Committee to develop system of public service incentives within public library accreditation program.

The Mississippi Library Commission shall be responsible for developing a system of public service incentives within a public library accreditation program on the recommendation of a committee of qualified public library professionals and trustees. The committee of fifteen (15) members shall be appointed by the Mississippi Library Commission Board of Commissioners as follows: seven (7) public library trustees with at least one (1) from each congressional district; five (5) professional public librarians, one (1) appointed by each commissioner; and three (3) at-large members.

SOURCES: Laws, 1988, ch. 589, § 3, eff from and after July 1, 1988.

§ 39-3-357. State aid to accredited public library systems.

Each accredited public library system shall receive an annual allocation of state funds to supplement the local appropriation and other income. Library cooperatives which include accredited public library systems may receive state aid. The state aid shall be used only to support library services in accredited public library systems and in cooperatives including accredited public library systems. The amount of the minimum allocation for each public library system shall be based on specific local service levels of the public library system and as identified by accreditation category.

SOURCES: Laws, 1988, ch. 589, § 4, eff from and after July 1, 1988.

§ 39-3-359. Library commission as primary resource library; commission to provide services to libraries.

The commission shall be the primary resource library for Mississippi public libraries and shall develop its collection accordingly. The commission shall provide services to libraries within the funds available and in keeping with the goal of efficient use of library resources in the state.

SOURCES: Laws, 1988, ch. 589, § 5, eff from and after July 1, 1988.

§ 39-3-361. Authorization to employ consultants and other staff.

The commission may employ consultants and other staff to implement the development system by working with cooperatives and public library systems.

SOURCES: Laws, 1988, ch. 589, § 6, eff from and after July 1, 1988.

§ 39-3-363. Development of statewide master plan for public libraries.

The commission shall develop a statewide master plan for public libraries, including plans for levels of library services and resources, which is developed through a continuing process of planning. The master plan must be designed to extend five (5) years into the future and mmust be made current at least every two (2) years.

SOURCES: Laws, 1988, ch. 589, § 7, eff from and after July 1, 1988.

§ 39-3-365. Confidentiality of library user records.

Records maintained by any library funded in whole or in part by public funds, which contain information relating to the identity of a library user, relative to the user's use of books or other materials at the library, shall be confidential. Such records may only be released with the express written permission of the respective library user or as the result of a court order.

SOURCES: Laws, 1992, ch. 521, § 1, eff from and after July 1, 1992.

39-3-367. Release and use of aggregate statistics.

Aggregate statistics shown from registration and circulation records, with all personal identification removed, may be released or used by a library for research, planning and reporting purposes.

SOURCES: Laws, 1992, ch. 521, 2, eff from and after July 1, 1992.

39-3-369. Use of records for purpose of collecting overdue materials and fines.

No provision of this act shall be construed to prohibit any library, or any business operating jointly with a library, from disclosing information for the purpose of collecting overdue books, documents, films or other items or materials owned or otherwise belonging to such library. No provision of this act shall be construed to prohibit or hinder any such library or business office from collecting fines on such overdue books, documents, films or other items or materials.

SOURCE: Laws, 1992, ch. 521, 3, eff from and after July 1, 1992.

CHAPTER 5

Archives and History

IN GENERAL

SEC.
39-5-1. Department of archives and history; objects and purposes.
39-5-3. Board of trustees to control department.
39-5-5. Additional powers and duties of department.
39-5-6. Governor's mansion.
39-5-7. Director of department; term of office; duties and powers.
39-5-11. State and county officials empowered to turn over all records to director not in current use.
39-5-13. County boards of supervisors empowered to turn over historical portraits and make appropriations for oil portraits of distinguished men.

§ 39-5-1. Department of archives and history; objects and purposes.

There shall be for the State of Mississippi a department of archives and history located in the state capitol in apartments set aside for its use by the governor. The objects and purposes of the department are the care and custody of official archives, the collecting of materials bearing upon the history of the state and of the territory included therein, from the earliest times, the editing of official records and other historical material, the diffusion of knowledge in reference to the history and resources of this state, the preparation and publication of annual reports, the encouragement of historical work and research and the performance of such other acts and requirements as may be enjoined by law.

SOURCES: Codes, 1906, § 1633; Hemingway's 1917, § 3447; 1930, § 3626; 1942, § 6180.

Cross references—
Retention and filing of materials relative to audits, see § 7-7-215.
Powers and duties of the department under the Archives and Records Management Law of 1981, see §§ 25-59-1 et seq.
Exemption of certain archaeological records from requirements of public access, see § 39-7-41.
Creation of trusts for founding public institutions, see §§ 39-9-1 et seq.
Duties in connection with local government historic preservation districts, see § 39-13-7.

Research and Practice References—
2 Am Jur Trials, Locating Public Records, § 54.

§ 39-5-3. Board of trustees to control department.

The department of archives and history shall be under the control of a board of nine trustees. The board shall have the power and authority to fill all vacancies occurring therein, whether by expiration of term of service or by death or resignation, but the names of all newly elected members shall be communicated to the next ensuing session of the state senate for confirmation, and in case it shall reject any of the said newly elected trustees it shall proceed forthwith to fill the vacancy or vacancies by an election. All trustees chosen to succeed the present members or their successors shall serve for a term of six years. The board of trustees shall hold at the state capitol at least one regular meeting during the year, and as many special meetings as may be necessary, and at said meetings five members shall constitute a quorum. The director of the department of archives and history, hereinafter provided, shall be secretary of the board. The trustees shall receive no compensation for their services other than the amount of their necessary expenses actually paid out while in attendance on the meetings of the board or the business of the department. The board is empowered to adopt rules for its own government and for the government of the department, to elect and fix the compensation of a director not to exceed the maximum set by the legislature, and other officials or employees, and to

do and perform such other acts and things as may be necessary to carry out the true intent and purposes of this chapter.

SOURCES: Codes, 1906, § 1634; Hemingway's 1917, § 3448; 1930, § 3627; 1942, § 6181; Laws, 1960, ch. 237; 1966, ch. 445, § 16, eff from and after July 1, 1966.

Cross references—
Salaries of board of trustees, see § 25-3-31.
Powers and duties of the board of trustees with respect to the governor's mansion, see § 39-5-6.

§ 39-5-5. Additional powers and duties of department.

The duties and powers of the Board of Trustees of the Department of Archives and History shall include, in addition to other duties and powers granted or prescribed by law, the following:

(a) To determine the location of places of historical interest within the state;

(b) To make a survey of buildings of all types throughout the state which are in danger of destruction, without proper care, and which in the opinion of the board of trustees should be preserved for historical purposes;

(c) To contact the proper authorities of the United States national cemeteries and military parks to determine whether or not the record of Mississippi troops is adequately commemorated;

(d) To acquire, preserve, restore or operate any real or personal property deemed significant for historical, architectural, archaeological or cultural reasons, to expend funds for such purposes, to enter into contracts or agreements with any agency of the United States or any person, firm, corporation or association for such purposes and to do any and all things which may be necessary or desirable to carry out such purposes;

(e) To participate with any agency of the United States, any other governmental agency or any person, firm, corporation, association or group in mutual or cooperative programs or projects within the duties and powers of the board of trustees;

(f) To accept grants or donations of money or property, real or personal, from any agency of the United States, any other governmental agency or any person, firm, corporation, association or group. However, the board of trustees shall not be required, except by specific act of the Legislature, to accept any property without its consent; and

(g) To provide suitable markers with adequate descriptions of the historical sites to which they refer, for places of historical interest and to provide suitable markers on the highways and roads of this state showing the direction and distance to the historical sites.

SOURCES: Codes, 1942, § 6181.5; Laws, 1968, ch. 501, § 1; 1979, ch. 438, § 13; 1990, ch. 502, § 4, eff from and after July 1, 1990.

Cross references—
General accounting office records not to be destroyed without approval of director of department of archives and history, see § 7-7-63.
Powers and duties of the department under the Archives and Records Management Law of 1981, see §§ 25-59-1 et seq.
Powers and duties of the board of trustees with respect to the governor's mansion, see § 39-5-6.

§ 39-5-6. Governor's mansion.

The duties and powers of the board of trustees of the department of archives and history shall include, in addition to other duties and powers granted or prescribed by law, the following:

(a) To promulgate rules and regulations governing the use of the historic portion of the governor's mansion;

(b) To promulgate rules and regulations governing the acquisition of furniture and furnishings, including but not limited to carpets, rugs, paintings, draperies and objects of art, for the original or historic portion of the governor's mansion;

(c) To employ a curator of the mansion who shall maintain a descriptive inventory of all furniture and furnishings in the governor's mansion, including flat silver and silver hollow ware, who shall be responsible for the care and custody of the furniture and furnishings of the mansion, and who shall conduct an educational training program for staff and volunteer guides who may conduct tours of the mansion when it is open to the public at specified times agreed upon by the governor;

(d) To promote the donation or loaning of money or property, real or personal, from any agency of the United States, state or local government, any person, firm, corporation, association or group, for the purpose of furnishing or decorating the original or historic portion of the governor's mansion;

(e) To accept such donations of money or property, real or personal, from any agency of the United States, state or local government, any person, firm, corporation, association or group, for the purpose of furnishing or decorating the original or historic portion of the governor's mansion, provided that the board of trustees shall not be required to accept any donation of furniture or furnishings without its consent;

(f) To sell, donate or otherwise dispose of unused surplus property of the governor's mansion, excluding any property located in the mansion which belongs to the governor's office, and to deposit the proceeds of such sales in the governor's mansion fund of the board of trustees of the department of archives and history for use, in the board's discretion, in acquiring furniture or furnishings, including but not limited to carpets, rugs, paintings, draperies and objects of art, for the original or historic portion of the governor's mansion; and

(g) To review and approve any major changes in the architecture, furniture, furnishings, decoration or landscaping of the grounds of the governor's mansion.

SOURCES: Laws, 1974, ch. 337; 1979, ch. 438, § 14; 1980, ch. 349, § 1, eff from and after passage (approved April 23, 1980).

Cross references—
Board of trustees, generally, see §§ 39-5-3, 39-5-5.
Prohibition on removal of property from governor's mansion and penalty for violations, see § 39-5-21.

§ 39-5-7. Director of department; term of office; duties and powers.

The department of archives and history shall be under the immediate management and control of a director, to be elected by the board of trustees, whose term of office shall be six years, and until his successor is elected and qualified. He shall take an oath of office as do other state officials, and shall be commissioned in like manner. He shall have authority to adopt a seal for use in official business. He shall devote his time to the work of the department, using his best endeavor to develop and build it up, so as to carry out the design of its creation. He shall have the control and direction of the work and operations of the department, and shall preserve its collection, care for the official archives that may come into his custody, collect, as far as possible, all materials bearing upon the history of the state and the territory included therein from the earliest times, prepare the official registers hereinafter provided, and diffuse knowledge in reference to the history and resources of the state. The director of the department shall make a report of the expenses of the department to the legislature of the state as state officers.

SOURCES: Codes, 1906, § 1635; Hemingway's 1917, § 3449; 1930, § 3628; 1942, § 6182.

Cross references—
Reproduction of county records on film and destruction of originals, see § 19-15-3.
Salary of director of department of archives and history, see § 25-3-33.
Ceiling on salaries for state employees, see § 25-3-39.
Powers and duties of the department and director under the Archives and Records Management Law of 1981, see §§ 25-59-1 et seq.

§ 39-5-11. State and county officials empowered to turn over all records to director not in current use.

Any state, county, municipal or other official is hereby authorized and empowered, in his discretion, to turn over to the department for permanent preservation therein, any official books, records, documents, original papers, newspaper files and printed books not in current use in their offices. When so surrendered copies therefrom shall be made and certified by the director upon the application of any person interested, which certification shall have all the force and effect as if made by the officer originally in the custody of them, and for which the same fees shall be charged, to be collected in advance.

SOURCES: Codes, 1906, § 1636; Hemingway's 1917, § 3450; 1930, § 3629; 1942, § 6183.

§ 39-5-13. County boards of supervisors empowered to turn over historical portraits and make appropriations for oil portraits of distinguished men.

The county boards of supervisors are hereby authorized and empowered to turn over to the department

historical portraits which may be the property of the counties, and to make appropriations, on application of the director, for the purpose of placing oil portraits of distinguished citizens of Mississippi in the state's hall of fame. The selection of such portraits shall be made at the request and under the direction of the board of trustees of the department.

SOURCES: Codes, 1906, § 1637; Hemingway's 1917, § 3451; 1930, § 3630; 1942, § 6184.

CHAPTER 9

Trusts to Promote Arts and Sciences

SEC.
39-9-5. No institution for profit to be founded hereunder.

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§ 39-9-5. No institution for profit to be founded hereunder.

No institution for pecuniary profit shall be founded under this chapter; nor shall any dividends be declared or paid by any institution founded under this chapter; and no trustee, officer, member or employee of any institution founded hereunder shall receive, or be entitled to receive, any pecuniary profit from the operations thereof except reasonable compensation for services in effecting or furthering any one or more of the objects or purposes of the institution. In case of a public library any requirements for the payment of fees for various privileges shall not divest such library of its public character when such requirements are usual or customary in case of public libraries throughout the state or the United States. In the case of educational institutions, requirements as to the payment of matriculation fees, laboratory fees, library fees, fees of like kind or nature, board and lodging of students, and any of the requirements customary or usually insisted upon in the public educational institutions of this state shall not divest such institutions of their public character.

SOURCES: Codes, 1930, § 3638; 1942, § 6195; Laws, 1922, ch. 193.

TITLE 43
PUBLIC WELFARE

Chapter 5. Schools for the Blind and Deaf

CHAPTER 5

Schools for the Blind and Deaf

IN GENERAL

SEC.
43-5-5. Powers and duties of Board.

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§ 43-5-5. Powers and duties of Board.

The State Board of Education shall adopt all needful rules and regulations for the government of the schools. The State Board of Education shall have authority and control over the pupils and over the properties of each school except where otherwise prescribed by law. The State Board of Education shall provide and maintain libraries for each school, and shall provide for proper and needful recreational facilities for the pupils of the separate schools, and encourage their physical and hygenic and religious advancement, including facilities for church attendances on the Sabbath.

SOURCES: Codes, 1942, § 6785-02; Laws, 1936, ch. 180; 1944, ch. 163, § 3; 1968, ch. 416, § 1; 1977, ch. 338; 1989, ch. 544, § 146; 1992, ch. 338, § 1, eff from and after July 1, 1992.

Cross references—

Establishing vocational departments in schools for the blind and deaf, see § 37-31-15.

Additional powers of Board regarding the annual conference of representatives of state and other agencies, see §§ 43-5-31, 43-5-33.

Filing of annual report, see § 43-5-11.

TITLE 45

PUBLIC SAFETY AND GOOD ORDER

Chapter 6. Law Enforcement Officers Training Program

CHAPTER 6

Law Enforcement Officers Training Program

SEC.

45-6-13. Reimbursement for attending training program; professional library.

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§ 45-6-13. Reimbursement for attending training program; professional library.

(1) The board shall establish, provide or maintain law enforcement training programs through such agencies and institutions as the board may deem appropriate.

(2) The board shall authorize, but only from such funds authorized and appropriated by the Legislature, the reimbursement to each political subdivision and to state agencies of at least fifty percent (50%) of the salary and allowable tuition, living and travel expense incurred by the officers in attendance at approved training programs, provided said political subdivisions and state agencies do in fact adhere to the selection and training standards established by the board.

(3) The board is authorized to expend funds for the purpose of providing a professional library and training aids that will be available to state agencies and political subdivisions.

(4) If any law enforcement officer in this state who is employed by a municipality, county or other governmental entity shall, within three (3) years after the date of his employment, resign from, or be terminated from, employment by such entity and immediately become employed by another governmental entity in a law enforcement capacity, then the governmental entity by which the resigned or terminated officer is employed shall reimburse the governmental entity from which the officer resigned or was terminated a proportionate share of the officer's law enforcement training expenses which were incurred by such entity, if any.

SOURCES: Laws, 1981, ch. 474, § 7; 1993, ch. 458, § 1, eff from and after July 1, 1993.

TITLE 57

PLANNING, RESEARCH AND DEVELOPMENT

Chapter 39. Energy and Transportation Planning

CHAPTER 39

Energy and Transportation Planning

Article 1

Energy and Transportation System

Sec.
57-39-21. Energy efficiency standards for buildings; enforcement.

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§ 57-39-21. Energy efficiency standards for buildings; enforcement.

(1) The board, in consultation with other appropriate professional groups and organizations, and others knowledgeable in the subject, shall develop and promulgate in accordance with Title III of Public Law 94-163 and Title III of Public Law 94-385 of the Ninety-fourth Congress, thermal and lighting efficiency standards, standards for computer-based energy management systems, standards for systems for cogeneration of heating, cooling and electricity, and standards for design to use passive solar energy concepts, in order to promote the efficient use of energy. The standards shall apply to all buildings as required by subsections (4) and (5) of this section. For the purposes of this section, "building" shall mean any structure which includes provisions for a heating or cooling system, or both, or for a hot water system, except exempted buildings. Unless it is an exempted building, each of the following is a building, within the meaning of this section:

(a) Any building which provides facilities or shelter for public assembly, or which is used for educational, office or institutional purposes;

(b) Any inn, hotel, motel, sports arena, supermarket, transportation terminal, retail store, restaurant or other commercial establishment which provides services or retails merchandise;

(c) Any portion of an industrial plant building used primarily as office space; and

(d) Any building owned by a state or political subdivision or instrumentality thereof, including libraries, museums, schools, hospitals, auditoriums, sports arenas and university buildings.

(2) Exempt buildings shall include:

(a) Buildings and structures or portions thereof whose peak design rate of energy usage is less than three and four-tenths (3.4) British thermal units per hour per square foot or one (1.0) watt per square foot of floor area for all purposes;

(b) Buildings and structures or portions thereof which are neither heated nor cooled by fuel;

(c) Any mobile home;

(d) Any privately-owned, non-commercial building or structure whose construction, heating, cooling or lighting arrangement is not in conflict with federal law;

(e) Any building owned or leased in whole or in part by the United States Government.

(3) This section shall apply to existing buildings as follows:

(a) Additions to existing buildings. Additions to existing buildings or structures may be made to such buildings or structures without making the entire building or structure comply. The new addition shall conform to the provisions of this section as they relate to new construction only.

(b) Historic buildings. Historic buildings are exempt from this section. This exemption shall apply to those buildings which have been specifically designated as historically significant by the state or local governing body, or listed in "The National Register of Historic Places" or which have been determined to be eligible for listing.

(c) Change of occupancy. Any change in the occupancy or use of any existing building or structure constructed under this section which would require a substantial increase in demand for either fossil fuel or electrical energy supply shall not be permitted unless such building or structure is made to comply with the requirements of this section.

(4) The lighting efficiency standards promulgated pursuant to subsection (1) shall:

(a) For all existing buildings throughout the state, be of a uniform stringency to the extent possible, provided that any more stringent local standards existing on July 1, 1979, shall prevail; and

(b) For all new buildings in the state, be a standard consistent with the provisions of section 9 of Standard 90-75 of the American Society of Heating, Refrigeration and Air-conditioning Engineers.

(5) The thermal efficiency standards promulgated pursuant to subsection (1) shall:

(a) For all new buildings in the state, be a standard consistent with the provisions of sections 4 through 9 of Standard 90-75 of the American Society of Heating, Refrigeration and Air-conditioning Engineers; and

(b) For all existing buildings which are altered, repaired or renovated in this state and in which the cost of the alteration, repair or renovation exceeds twenty-five percent (25%) of the fair market value of the building be a standard consistent with the provisions of the most stringent local standard existing on the effective date of this chapter as determined by the commission.

(6) Beginning July 1, 1980, the design, direction, construction and alteration of any building for which the standards promulgated pursuant to subsection (1) of this section shall apply shall be accomplished so that the building or applicable portions thereof shall meet or conform to such standards. Local governing authorities shall adopt rules and regulations for the administration and enforcement of this section, and to adopt such penalties for violation of this section as they deem appropriate, except in regard to buildings owned by the state. In state-owned buildings, the building commission shall provide for the compliance with the standards adopted under this chapter. Local governing authorities are authorized to adopt rules and regulations as developed and promulgated by the commission for the administration and enforcement of these standards and to adopt such penalties for violations of the standards as they deem appropriate. Local governing authorities are authorized to establish an inspection fee for the inspection of thermal and lighting standards not to exceed fifty dollars ($50.00).

SOURCES: Laws, 1980, ch. 548, § 11, eff from and after passage (approved May 26, 1980).

Editor's Note—

Section 31-11-1(2) provides that the term "state building commission" or "building commission" wherever it appears in the laws of Mississippi shall be construed to mean the governor's office of general services.

Cross references—

Energy management plan for state-owned or state-leased buildings, see §§ 57-39-101 et seq.

TITLE 75

REGULATION OF TRADE, COMMERCE AND INVESTMENTS

Chapter 23. Fair Trade Laws

CHAPTER 23

Fair Trade Laws

FAIR COMPETITION IN SALES OF BOOKS, MAGAZINES, ETC.

SEC.
75-23-51. Fair competition in sales of books, magazines and other printed matter; public protected.
75-23-53. Fair competition in sales of books, magazines and other printed matter; contracts in violation of antitrust laws.

§ 75-23-51. Fair competition in sales of books, magazines and other printed matter; public protected.

It is hereby declared to be the legislative intent to encourage fair and honest competition; and to provide the retail merchants of this state with a freedom of choice concerning those books, pamphlets, magazines, periodicals, newspapers, picture magazines, comic books, story papers, and/or similar printed or written matters or materials which they might desire to offer for sale within their individual establishments; and to safeguard the public from exposure to printed or written materials or matters which appeal to the prurient interest, and concerning which the retail merchants of this state, or any one or more of them, might not desire to voluntarily offer for sale within their individual establishments.

SOURCES: Codes, 1942, § 1108.5-21; Laws, 1966, ch. 385, § 1, eff from and after July 1, 1966.

Cross references—
Purchase of school textbooks, see § 37-43-27.

Research and Practice References—
32 Am Jur 2d, Fair Trade Laws §§ 1 et seq.
54 Am Jur 2d, Monopolies, Restraints of Trade, and Unfair Trade Practices §§ 714 et seq.
87 CJS, Trade-marks, Trade-names, and Unfair Competition §§ 237 et seq.
10 Am Jur Pl & Pr Forms (Rev), Fair Trade Laws, Forms 1-8 (actions by producer, manufacturer, or distributor).
10 Am Jur Pl & Pr Forms (Rev), Fair Trade Laws, Forms 21 (actions by retailers).
8 Am Jur Trials 359, Trademark Infringement and Unfair Competition Litigation.

Annotations—
Practices forbidden by state deceptive trade practice and consumer protection acts. 89 ALR3d 449.

§ 75-23-53. Fair competition in sales of books, magazines and other printed matter; contracts in violation of antitrust laws.

Any contract or agreement of any nature which would, directly or indirectly, require, or result in requiring, any retail merchant located in this state to obtain or offer for sale within his individual establishment any books, pamphlets, magazines, periodicals, newspapers, picture magazines, comic books, story papers, and/or similar printed or written matters or materials, other than those which he might voluntarily select for such purpose, or as a requirement or condition to obtaining those he might voluntarily select for such purpose, shall be deemed to be a contract or agreement in restraint of the freedom of trade and a violation

of the antitrust laws of this state; and the party offering such contract or agreement shall be subject to all the laws of this state pertaining to the operation of trusts and combines. In addition, the said contract or agreement shall be deemed void and cannot be enforced in any court.

SOURCES: Codes, 1942, § 1108.5-22; Laws, 1966, ch. 385, § 2, eff from and after July 1, 1966.

Cross references—
Antitrust law, see §§ 75-21-1 et seq.

Annotations—
Practices forbidden by state deceptive trade practice and consumer protection acts. 89 ALR3d 449.

TITLE 83
INSURANCE

Chapter 17. Insurance Agents, Solicitors, or Adjusters

CHAPTER 17

Insurance Agents, Solicitors, or Adjusters

Article 3

Regulation of Agents for Life, Health, or Accident Insurers

Sec.
83-17-109. Examination of applicant for license.

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§ 83-17-109. Examination of applicant for license.

(1) Each applicant for a license to act as an agent within this state shall submit to a personal written examination to determine his competence to act as an agent and his familiarity with the pertinent provisions of the laws of this state, and shall pass the same to the satisfaction of the commissioner; except that no such written examination shall be required of:

(a) an applicant for a renewal license unless the commissioner determines that such examination is necessary to establish the competency of the applicant, or unless a license had not been effective as to such applicant within two (2) years preceding the date of filing the application;

(b) an applicant who is a ticket-selling agent of a railroad or steamship company, carrier by air, or public bus carrier who shall act as an agent or solicitor in the sale of accident insurance tickets to individuals;

(c) an applicant who shall be licensed to act only as an agent with respect to life, health and accident insurance on borrowers or debtors commonly known as credit life, health and accident insurance;

(d) in the discretion of the commissioner, an applicant whose license to do business or act as an agent in this state was suspended less than one year prior to the date of application;

(e) an applicant who is an agent of a fraternal benefit society exclusively.

(2) The commissioner may establish rules and regulations with respect to the classification of applicants according to the type of insurance contracts to be effected by them if licensed as agents, and with respect to the scope, type, and conduct of written examinations to be given pursuant to this section, and the times and places within this state for the holding of such examinations.

Such rules and regulations, if established, shall classify applicants for purposes of this section as follows:

(a) those desiring to write life insurance,

(b) those desiring to write accident and health insurance, other than industrial accident and health insurance,

(c) those desiring to write industrial accident and health insurance,

(d) those desiring to write any combination of two (2) or more of the above classifications, and

(e) those of such other classification as, in the opinion of the commissioner, are necessary or appropriate.

Examination shall be prepared and given in those subjects only which pertain to the classification or classifications which the applicant desires to write, and no applicant shall be required to take an examination on a subject or subjects pertaining to any other classification.

The rules and regulations of the commissioner, if established, shall designate textbooks, manuals, and other materials to be studied by applicants in preparation for examination in each classification designated by the commissioner pursuant to this section. Such textbooks, manuals or other materials may consist of matter available to applicants by purchase from the publisher, or may consist of matter prepared at the direction of the commissioner and distributed to applicants upon request therefor and payment of the reasonable cost thereof. If textbooks, manuals, or other materials shall have been designated or prepared by the commissioner pursuant to this section, all examination questions shall be prepared from the contents of such textbooks, manuals, or other materials.

SOURCES: Codes, 1942, § 5722-05; Laws, 1960, ch. 367, § 5, eff from and after July 1, 1960.

Research and Practice References—
43 Am Jur 2d, Insurance § 66.
44 CJS, Insurance § 85.

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